

MARIN MUNICIPAL WATER DISTRICT



**MARIN
WATER**

**BID PROPOSAL FOR
FURNISHING AND DELIVERY OF MOTOR FUELS**

CONTRACT NO. 1956

**Marin Municipal Water District
220 Nellen Avenue
Corte Madera, CA 94925**

August 2021

NOT FOR BIDDING PURPOSES

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NOTICE INVITING BIDS

Sealed bids for the Furnishing and Delivery of Motor Fuels will be received at the Office of the Purchasing Department, Marin Municipal Water District, 220 Nellen Avenue, Corte Madera, CA 94925, until 10:00 am, Thursday, August 26, 2021, at which time they will be publicly opened and read in the Board of Directors' room by the Secretary or a designated representative. This contract is for furnishing and delivery of fuel to various District locations for a four-year period commencing on November 1, 2021 and ending October 31, 2025.

Within five working days after the bid opening date for this proposal, the apparent lowest bidder shall submit a credit report, current within 30 days of the bid opening date for this proposal. For privacy purposes, the report may be submitted in an envelope marked "CONFIDENTIAL." To be considered a responsible bidder on this proposal, either the Vendor's credit report shall indicate a Dun & Bradstreet credit risk rating of BA2 or better or the Vendor's bank shall issue a financial statement on the form attached as Page VI-a.

BEFORE BIDDING: Bidders should contact their insurance brokers to verify that their insurance meets all insurance requirements of the contract and that their broker will provide a completed MMWD Additional Insured Endorsement. Bidders should provide pages X, X-a, and X-b of the contract to their insurance brokers for reference.

Unless otherwise specified, proposals will be considered for the complete job only. In accordance with the Instructions to Bidders, all bid documents must be completed on forms supplied with the contract specifications. Each Bidder is requested to return the entire specification booklet.

The Bidder's attention is drawn to the Specials Provisions section regarding Dispute Resolution. This section provides any disputes or claims between the District and the Supplier are subject to mediation, and then if still unresolved, at the sole election of the District, to binding arbitration. The Bidder's attention is also called to Marin Municipal Water District Code Sections 2.90.065 through 2.90.067 which permit the District to disqualify a Supplier from bidding on future contracts with the District if the supplier fails to comply with the rules and regulations specified in the District's code or the requirements for performance specified in this contract including submission of false claims to the District.

Proposals must be submitted in a sealed envelope addressed to the attention of the Department of Purchasing, with the words "**MOTOR FUELS-CONTRACT NO. 1956, August 26, 2021**" clearly marked on the outside of the envelope.

Specifications may be obtained at the Department of Purchasing in the District's Office located at 220 Nellen Avenue, Corte Madera, or by phone, (415) 945-1402. Bidders who have questions regarding the contract should contact the Department of Purchasing at (415) 945-1402.

The District reserves the right to reject any and all bids and to waive any irregularities in said bids.

INSTRUCTIONS TO BIDDERS

The Bidder's attention is called to the forms and documents listed below which must be executed in full as required. Signature by the Bidder indicates that the information provided by the Bidder is accurate. The Bidder is requested to return the entire specification booklet with his bid.

I. **TO BE EXECUTED AND SUBMITTED WITH THE BID (OTHERWISE THE BID MAY BE REJECTED AS IRREGULAR)**

A. **Proposal Signature Sheet (Page III of this Contract)**

To be filled in completely and signed by Bidder.

B. **Bidding Sheet Schedule (Page IV of this Contract)**

To be filled in completely and signed by Bidder.

C. **Experience and Qualifications (Page V of this Contract)**

To be filled in completely and signed by Bidder.

D. **Bidder's References and Credit Report (Page V of this Contract)**

To be filled in completely and signed by Bidder.

E. **Noncollusion Affidavit (Page VII of this Contract)**

To be filled in completely and signed by Bidder.

II. **TO BE EXECUTED BY THE SUCCESSFUL BIDDER ONLY (BEFORE THE START OF WORK)**

Within seven (7) calendar days after the date on the "Award Documents and Requirements" letter, the Supplier shall execute (3) three copies of the contract, return them to the District and complete and submit the following documents and requirements:

A. **Proof of Workers' Compensation Insurance and Public Liability Insurance (Page X of this Contract)**

The successful Bidder shall submit proof to the District that he has satisfactory insurance coverage provided by insurers admitted to do business in the State

of California, as required by Articles 13 and 14 of the "General Specifications of the District Standard Specifications". In addition, the following specific insurance requirements shall be met:

1. Adequate Workers' Compensation Insurance coverage and terms.
2. Waiver of subrogation endorsement in favor of the District.
3. Public Liability coverage of not less than \$2,000,000 per occurrence and a Five Million Dollar aggregate.

Each such policy shall be endorsed with the "Additional Insured Endorsement" form on Page X-b.

**B. Workers' Compensation Certificate
(Page IX of this Contract)**

To be filled in completely by the Successful Bidder.

**C. Agreement
(Page VIII of this Contract)**

To be signed and sealed by the Successful Bidder.

Upon satisfactory execution of the contract and determination of insurance and bond acceptability, the District will provide the Supplier with a copy of the fully executed contract and a "Notice to Proceed".

INFORMATION FOR BIDDERS

1. BIDDER MUST MAKE THOROUGH STUDY AND INVESTIGATION

The Bidder must familiarize himself with the project by thorough personal examination of the proposed work, by due consideration of the specifications and by use of any other means that may be necessary to determine the following:

- a. The actual conditions and requirements of the work;
- b. Any unusual difficulties that may be encountered in the prosecution of the work;
- c. The character and respective amounts of all classes of labor and material which the supplier may be required to furnish in order to complete all or any part of the work; and
- d. All circumstances and conditions affecting the work or its cost.

The Bidder's proposal must include any and all expenses he may incur in order to complete the work stipulated under the proposed contract.

Any failure of the Supplier to acquaint himself with all the available information concerning the above shall not relieve him from responsibility for estimating properly the difficulties or cost to successfully perform the work.

2. UNDERSTANDING OF CONTRACT DOCUMENTS

By submitting a bid, the Bidder acknowledges that he understands each and every part of the contract documents. His submittal also certifies that he has performed a thorough study as indicated in Article 1 (above) and he understands thoroughly the intent of all parts of the contract documents and the nature of the work. As a result, the Bidder agrees, if selected as Supplier, that he will not hereafter make any claim for compensation, extension of time or other allowance of any sort, based upon or arising out of any alleged misunderstanding by him of any part of the plans, specifications or the physical conditions existing at the construction site. The Bidder shall, upon discovering any error or omission in the contract documents, immediately call it to the attention of the Project Manager.

3. DESCRIPTION OF BID ITEMS

The Bidder's attention is directed to the fact that full work requirements are set forth in the Bid Item Descriptions and the Technical Specifications, which indicate the specific and detailed work to be performed under each of the individual work items shown on the Bidding Sheet Schedule.

In certain cases, requirements set forth in the Bid Item Description may add to or supersede the information set forth in other sections of the General Specifications. In such event, the requirements set forth under the Bid Item Description shall take precedence over a general requirement and become a contract requirement.

4. GENERAL CONDITIONS OF BIDDING

All bid documents must be completed on forms supplied with the contract specifications. The Bidder must return the entire specification booklet to the District in a sealed envelope, which is addressed as indicated in the Notice Inviting Bids. Proposals will be received at the Office of the Purchasing Department, Marin Municipal Water District, 220 Nellen Avenue, Corte Madera, California 94925, at any time up to the date and hour named in the published call for bids. Any bids received after that time will be returned to the bidder unopened.

Bids having any erasure or interlineation may be rejected by the District. Any changes on the Bidding Sheet must be initialed by the Bidder or his authorized representative. Failure to do so may result in bid rejection.

Statements or communications accompanying bids which serve to qualify or condition bids (except as provided for in the Notice Inviting Bids) may be disregarded by the District in making contract awards. Contract awards shall be made without regard to added conditions unless the statement or communication is expressly mentioned and accepted in the resolution of award. The District may, at its option, disqualify any bid containing such statement or communication. The District may also waive any irregularity in any bid.

5. EXPERIENCE AND FINANCIAL QUALIFICATIONS

The Bidder will be required to show to the satisfaction of the District that he has the necessary experience in the class of work to be performed, and the ability, equipment and financial resources to perform the work satisfactorily within the time specified. This information must be filed by the Bidder with his proposal and on blanks furnished by the District and will be used by the District in determining the lowest, responsible bidder.

The sufficiency of the Bidder's experience and financial qualifications will be determined solely by the District and its decision shall be final.

The Bidder may be required to furnish to the District information regarding technical experience, financial status, and available equipment for each subcontractor mentioned in his proposal. The District reserves the right to review qualifications of subcontractors and will advise the Bidder of its findings.

6. COLLUSION

No person, firm, or corporation shall be allowed to make, file or be interested in more than one bid for the same work, except where alternate bids are requested. No person, firm, or corporation shall knowingly receive preferential treatment by any officer or any employee of the District. Violation of this section will, at the discretion of the District, result in immediate termination or cancellation of the contract.

A person, firm or corporation acting as a subcontractor for labor or material portions of the contract will not be disqualified for submitting subproposals or quotations to more than one bidder on the same contract.

7. AWARD OF CONTRACT - REJECTION OF BIDS

Award of the contract will normally be made by the District to the lowest, responsible bidder within a reasonable time after the opening of proposals. The District may reject any and all bids and must reject any bid of any party found not to be a responsible Bidder.

8. NATURE OF ESTIMATED QUANTITIES

The amount of work and material required under the contract is estimated as set forth on the Bidding Sheet Schedule of the contract documents and these estimates will be used as a basis for comparing bids. Estimated quantities are only approximations of fuel to be provided, and the District reserves the right to increase, decrease, or eliminate the amount of fuel required under the contract.

Except as indicated in the specifications under the section entitled "Changes and Extra Work", the Supplier shall make no claims for anticipated profits, for loss of profit, for damages, or for any extra payment due to the differences between the amount of work actually done or materials actually furnished, and the estimated amount(s) as set forth in the Bidding Sheet Schedule.

9. ADDENDA AND EXPLANATION TO BIDDERS

Any explanation desired by Bidders regarding the meaning or interpretation of any of the contract documents must be requested in writing, with sufficient allowance of time for receipt of reply before the time set for opening of proposals. Any such explanations or interpretations will be made in the form of addenda to the documents and will be furnished to all Bidders. Bidders shall sign and submit all addenda with their proposals. The District is not authorized to give oral explanations or interpretations of contract documents, and a submission of a proposal constitutes agreement by the Bidder that he has placed no reliance on any such oral explanation or interpretation unless verified in writing. However, the District may upon inquiry by a Bidder, orally direct the Bidder's attention to the specific provision of the contract documents, which covers the subject of the inquiry.

PROPOSAL

_____, 20__

To The Marin Municipal Water District
Corte Madera, California

Pursuant to the foregoing Notice Inviting Bids, the undersigned Bidder here-with submits a proposal on the bidding sheet attached hereto and made a part hereof, and binds himself on award by The Marin Municipal Water District under this proposal to execute in accordance with such award a contract in the form hereto attached and of which this Proposal, forms, affidavits, drawings and specifications shall be a part, and to furnish the required bonds for guaranty of payment of claims for labor and materials and for performing and completing the said contract within the time stated and at the prices named in the Bidding Sheet hereto annexed. The attached Notice Inviting Bids, Information and Instructions for Bidders, all forms, affidavits, drawings and specifications are hereby made a part of this proposal, and all provisions thereof are hereby accepted by Supplier. The undersigned, as bidder, declares that the only persons or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm or corporation.

(Signature) _____

(Print Name) _____

(Title) _____

(Company Name) _____

(Address, City, State & Zip) _____

(Phone No. and Fax No.) _____

(Website) _____

(Email Address) _____

(Corporate Seal)

Nature of firm (corporation, partnership, etc.) and names of individual members of the firm, or names and titles of officers of corporation.

Corporation organized under the laws of the State of _____

BIDDING SHEET:

The Bidder's Fixed Price Differentials for fuel delivery to the District's tanks and the Off-Hour Emergency Delivery - Truck & Driver Hourly Rate, guaranteed from November 1, 2021 through October 31, 2025, are to be written in the table below.

- Corporation Yard - 220 Tamal Vista Blvd., Corte Madera, CA 94925
- Sky Oaks Watershed Headquarters - 49 Sky Oaks Road, Fairfax, CA 94930
- San Geronimo Treatment Plant - 330 San Geronimo Valley Drive, Woodacre, CA 94973
- Ignacio Booster Pump Station - 13 Hamilton Dr., Novato, CA 94949
- Bon Tempe Treatment Plant - at the end of Sky Oaks Road, Fairfax, CA 94930

OPIS Contract Benchmark Gross Pricing Standard Daily Rack Average with CAR Costs per gallon for San Francisco, CA for July 30, 2021:

Regular Unleaded Gasoline, 87 Octane	\$3.1523	Renewable (R99) CARB Ultra Low Sulfur Diesel No. 2	\$2.8680
CARB Ultra Low Sulfur Diesel No. 2	\$2.9441	Red Dye CARB Ultra Low Sulfur Diesel No. 2	\$2.9335

• Please use the following formula to calculate the Extended Price: **[OPIS Daily Rack Avg. Price (+) Bidder's Fixed Price Differential] (x) Est. Yearly Quantity (=) Extended Price**
Note: The Bidder's Fixed Price Differential may be up to four digits past the decimal point. Example: \$0.1234

	Tank	Delivery Type	Fuel Type	OPIS Daily Rack Average Price	(+)	Bidder's Fixed Price Differential Per Gallon	(x)	Estimated Yearly Quantity in Gallons	(=)	Extended Price:
Corporation Yard	10,000 Gallon Tank	Truck-Trailer	Regular Unleaded Gasoline, 87 Octane	\$3.1523	(+)		(x)	70,000	(=)	
	10,000 Gallon Tank	Truck-Trailer	Renewable (R99) CARB Ultra Low Sulfur Diesel No. 2	\$2.8680	(+)		(x)	28,000	(=)	
	In the event that Renewable (R99) Diesel CARB Ultra Low Sulfur Diesel No. 2 is unavailable during the contract period, the District may require a delivery of the following fuel. Please provide the Bidder's Fixed Price Differential for CARB Ultra Low Sulfur Diesel No. 2 for the Corporation Yard 15,000 Gallon Tank:									
	15,000 Gallon Tank	Truck-Trailer	CARB Ultra Low Sulfur Diesel No. 2	\$2.9441						
Sky Oaks Watershed Headquarters	2,000 Gallon Tank	Bobtail	Regular Unleaded Gasoline, 87 Octane	\$3.1523	(+)		(x)	11,000	(=)	
	1,000 Gallon Tank	Bobtail	Renewable (R99) CARB Ultra Low Sulfur Diesel No. 2	\$2.8680	(+)		(x)	9,000	(=)	
	In the event that Renewable (R99) Diesel CARB Ultra Low Sulfur Diesel No. 2 is unavailable during the contract period, the District may require a delivery of the following fuel. Please provide the Bidder's Fixed Price Differential for CARB Ultra Low Sulfur Diesel No. 2 for the Sky Oaks 10,000 Gallon Tank:									
	1,000 Gallon Tank	Bobtail	CARB Ultra Low Sulfur Diesel No. 2	\$2.9441						
San Geronimo Treatment Plant	(2) 10,000 Gallon Tanks	Bobtail	Red Dye CARB Ultra Low Sulfur Diesel No. 2	\$2.9335	(+)		(x)	25,000	(=)	
	In the event that Red Dye CARB Ultra Low Sulfur Diesel No. 2 is unavailable during the contract period, the District may require a delivery of the following fuel. Please provide the Bidder's Fixed Price Differential for Renewable (R99) CARB Ultra Low Sulfur Diesel No. 2 for the San Geronimo 10,000 Gallon Tanks:									
	(2) 10,000 Gallon Tanks	Bobtail	Renewable (R99) CARB Ultra Low Sulfur Diesel No. 2	\$2.8680						
Ignacio Booster Pump Station	3,000 Gallon Tank	Bobtail	Red Dye CARB Ultra Low Sulfur Diesel No. 2	\$2.9335	(+)		(x)	400	(=)	
Bon Tempe Treatment Plant	2,000 Gallon Tank	Bobtail	Red Dye CARB Ultra Low Sulfur Diesel No. 2	\$2.9335	(+)		(x)	200	(=)	
Please Combine the Extended Prices for the Tanks for the Extended Price Total:										
Please Enter the Off-Hour Emergency Delivery - Truck & Driver Hourly Rate:										

BIDDING SHEET:

Please sign below:

X

Signature of Authorized Bidder

Date

Print Name of Authorized Bidder

Street Address, City, State and Zip Code

Title

Customer Service Phone Number

Company Name

Fax Number

Designated Representative Contact Information:

Name of Designated Contact Person

Designated Contact Phone Number

Name of After Hours Emergency Contact

After Hours Emergency Contact Phone Number

NOT FOR BIDDING PURPOSES

BID PLANNING SCHEDULE:

Note to Bidders: The information below is presented for your bid planning only. It is a record of District fuel consumption for Fiscal Year 2021 at the locations indicated. Actual purchases during the term of the contract may be greater than or less than shown.

Fiscal Year 2021 Monthly Fuel Consumption													
Corporation Yard	JUL 2020	AUG 2020	SEP 2020	OCT 2020	NOV 2020	DEC 2020	JAN 2021	FEB 2021	MAR 2021	APR 2021	MAY 2021	JUN 2021	TOTAL GALLONS
Corte Madera 10,000 Gallon Tank Regular Unleaded Gasoline, 87 Octane	5,048	5,315	5,415	5,313	4,572	5,022	5,118	4,559	5,791	5,356	5,183	5,635	62,325
Corte Madera 15,000 Gallon Tank CARB Ultra Low Sulfur Diesel No. 2	1,494	2,811	2,038	2,800	2,506	2,285	1,335	1,376	1,967	1,404	2,187	2,716	24,919
Sky Oaks Watershed Headquarters	JUL 2020	AUG 2020	SEP 2020	OCT 2020	NOV 2020	DEC 2020	JAN 2021	FEB 2021	MAR 2021	APR 2021	MAY 2021	JUN 2021	TOTAL GALLONS
Sky Oaks 2,000 Gallon Tank Regular Unleaded Gasoline, 87 Octane	840	871	797	711	680	725	776	755	726	757	917	654	9,208
Sky Oaks 1,000 Gallon Tank CARB Ultra Low Sulfur Diesel No. 2	793	894	713	735	696	640	546	501	536	505	453	494	7,504
Ignacio Booster Pump Station 3,000 Gallon Tank	Estimated yearly quantity based upon one delivery every two to three years of approximately 1,000 gallons:												350
Bon Tempe Treatment Plant 2,000 Gallon Tank	Estimated yearly quantity based upon one delivery every three to four years of approximately 600 gallons:												150
San Geronimo Treatment Plant (2) 10,000 Gallon Tanks	Estimated yearly quantity based upon three to four deliveries per year:												25,000

EXPERIENCE AND QUALIFICATIONS

The following statements as to experience and qualifications of the Bidder are submitted with the Proposal as a part thereof, and the truthfulness and accuracy of the information is guaranteed by the Bidder.

The Bidder has been engaged in the fuel business under the present business name for _____ years. Experience in work of a nature similar to that covered in the proposal extends over a period of _____ years.

The Bidder, as a Supplier, has never failed to satisfactorily complete a contract awarded to him, except as follows: (name any and all exceptions and reasons therefor).

The following contracts for work of a similar nature have been satisfactorily completed in the last three years for the persons, firm or authority indicated, and to whom reference is made. Failure to provide adequate or truthful information shall be basis for disqualification.

<u>Year</u>	<u>Type of Work, Size</u>	<u>Location & for Whom Performed (Phone #)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Signature of Bidder _____

Title _____

Company _____

Address _____

Following is a list of plant and equipment owned by the Bidder.

<u>Quantity</u>	<u>Name, Type and Capacity</u>	<u>Condition</u>	<u>Location</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Signature of Bidder _____

Title _____

Company _____

Address _____

BIDDER'S REFERENCES AND CREDIT REPORT

Reference is hereby made to the following bank or banks as to the financial responsibility of the Bidder:

Name of Bank

Address

_____	_____
_____	_____
_____	_____

Reference is hereby made to the following surety companies as to the financial responsibility and general reliability of the Bidder:

Name of Surety Company____

Name of Surety Company____

Signature of Bidder_____

Title_____

Company_____

Address_____

Within five working days after the bid opening date for this project, the apparent lowest bidders shall submit a credit report, current within 30 days of the bid opening date for this project. For privacy purposes, the report may be submitted in an envelope marked "CONFIDENTIAL." To be considered a responsible bidder on this project, either the Supplier's credit report shall indicate a Dun & Bradstreet credit risk rating of **BA2** or better or the Supplier's bank shall issue a financial statement on the form attached as Page VI-a. If the Supplier is a Dun & Bradstreet member, a copy of the current Dun & Bradstreet rating form showing a rating not less than **BA2** will suffice.

If the Supplier is not a Dun & Bradstreet member, an acceptable credit report shall consist of the submittal of the District's Financial Statement Form (attached as Page VI-a) executed by the Supplier's bank. Failure to submit the required report within five working days of the bid opening date for this project shall cause the bid to be rejected. Failure to possess the required financial strength and credit risk rating shall cause the bid to be rejected. The District shall request confirmation of the Supplier's rating from Dun & Bradstreet Information Services. The sufficiency of the Bidder's financial qualifications will be determined solely by the District and its decision shall be final.

FINANCIAL STATEMENT FORM

_____ has an established deposit
(Supplier)

and borrowing relationship with _____ since
(Bank)

_____ Both business account and credit accommodations are maintained in a
(Date)

highly satisfactory manner. Based on my knowledge of _____ 's
(Supplier)

average monthly business account balances and its credit worthiness I believe its general financial strength and credit rating meet or exceed the Dun & Bradstreet* alphanumeric rating of not less than **BA2**.

(Supplier Company Name)

(Supplier Representative, Printed Name)

(Supplier Representative, Signature)

_____ Date

(Bank Name)

(Business Address)

(City/State/Zip Code)

(Bank Representative, Printed Name and Title)

(Bank Representative, Signature)

_____ Date

*Following are two Dun & Bradstreet rating component sheets to assist in the evaluation of the responsible bidder's tangible net worth and credit worthiness.

D&B Rating Components

Estimated Financial Strength

An Alphanumeric rating that represents the tangible net worth of a company as submitted by the management of that company. The ratings are listed below:

5A	\$50,000,000	and over
4A	\$10,000,000	49,999,999
3A	1,000,000	9,999,999
2A	750,000	999,999
1A	500,000	749,999
BA	300,000	499,999
BB	200,000	299,999
CB	125,000	199,999
CC	75,000	124,999
DC	50,000	74,999
DD	35,000	49,999
EE	20,000	34,999
FF	10,000	19,999
GG	5,000	9,999
HH	UP TO	4,999

Use this rating as a guide to the general financial strength of an organization.

Composite Credit Appraisal

A numerical rating of one to four with one being high and four limited. You can use this information to help judge the general credit-worthiness of a company. The ratings are listed below.

- 1 - High
- 2 - Good
- 3 - Fair
- 4 - Limited

This rating is determined by an evaluation of the payment, finance, history, and other related information.

Questions?

Call the Dun & Bradstreet Customer Service Center
1-800-234-DUNS (1-800-234-3867) for more information.

Interpreting Ratings, Scores & Classifications

What the Ratings mean.

5A to HH

"5A" to "HH" Ratings reflect company size based on net worth or equity as computed by D&B. Company size can be an effective indicator of credit capacity. These Ratings are assigned to businesses that have supplied D&B with a current financial statement.

1R and 2R

The "1R" and "2R" Rating categories reflect company size based on the total number of employees for the business. They are assigned to business files that do not contain a current financial statement.

Composite Credit Appraisal

For "5A" to "HH" Ratings, the Composite Credit Appraisal is a number, 1 through 4, that makes up the second half of the company's Rating and reflects D&B's overall assessment of that firm's creditworthiness.


In "1R" and "2R" Ratings, the "2," "3," or "4" Composite Credit Appraisal is based on analysis by D&B of company payments, public records, business age and other important factors. A "2" is the highest Composite Credit Appraisal a company not supplying D&B with current financial information can receive.

The D&B Composite Credit Appraisal is unique in that it considers both slow pay and default. It is defined as follows:

Composite Credit Appraisal

APPRAISAL	MAY INDICATE
1st Line	Very low chance of business failure and will usually pay all obligations within terms.
2nd Line	Low chance of business failure and will usually pay all obligations within terms.
3rd Line	Moderate chance of business failure and/or will usually pay all obligations slow.
4th Line	Higher chance of business failure and/or will usually pay all obligations slow.

Dun & Bradstreet Information Services

 a company of
The Dun & Bradstreet Corporation

© 1995 Dun & Bradstreet, Inc.

"--" (ABSENCE OF RATING)

A "--" symbol should not be interpreted as indicating that credit should be denied. It simply means that the information available to Dun & Bradstreet does not permit us to classify the company within our Rating key and that further inquiry should be made before reaching a credit decision. Some reasons for using a "--" symbol include: deficit net worth; bankruptcy proceedings; lack of sufficient payment information; or incomplete history information.

DS (DUNS SUPPORT)

This indicates that the information available to Dun & Bradstreet does not permit us to classify the company within our Rating key. When contained in a Business Information Report, an investigation will automatically be performed within four business days, at no additional charge.

ER (EMPLOYEE RANGE)

Certain lines of business, primarily banks, insurance companies and government entities, do not lend themselves to classification under the D&B Rating system. Instead, we assign these types of businesses an Employee Range symbol based on the number of people employed. No other significance should be attached to this symbol.

For example, a Rating of "ER7" means there are between five and nine employees in the company.

"ERN" should not be interpreted negatively. It simply means we don't have information indicating how many people are employed at this firm.

INV (INVESTIGATION BEING CONDUCTED)

When an "INV" appears, it means an investigation is being conducted on this business to get the most current details.

For more information,
call your D&B
Representative or our
Customer Service Center
at 1-800-234-3867.

NONCOLLUSION AFFIDAVIT

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

_____, being first duly sworn, deposes and says that he or she _____ (sole owner, a partner, president, secretary, etc.) of _____, the party making the foregoing bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Signed _____

Title _____

Subscribed and sworn to before me this _____ day of _____, 20@__

Seal of Notary

Notary Public

AGREEMENT

, hereinafter called "Supplier", and **Marin Municipal Water District**, a public corporation, Corte Madera, California, hereinafter called "District" agree as follows:

WHEREAS the District, by its Resolution No. _____ passed on _____, 20__, awarded to Supplier the contract for the following:

MOTOR FUELS CONTRACT 1865

NOW, THEREFORE, Supplier agrees to perform said work in a good and workmanlike manner, under the direction and to the satisfaction of the District and will furnish materials necessary for use in the performance thereof, all in accordance with the Notice Inviting Bids, Instructions to Bidders, Proposal Submitted by Supplier, Information and Instructions for Bidders, and all contract drawings and specifications attached hereto, all of which are by this reference made a part of this agreement. Supplier further agrees to pay and discharge, when due, all labor and material claims incurred by him in the performance of this agreement and all amounts which may become due under the Unemployment Insurance Act.

Said work shall be commenced @date on which the notice stating that the contract has been signed is mailed to Supplier by District and shall be prosecuted diligently thereafter within the time set forth in the Special Provisions.

District agrees that upon the performance of the contract, District will pay to Supplier for said work, at the time(s), in the manner, and to the extent provided by law and in said Specifications, the amounts due to Supplier under this contract.

Supplier warrants that he has inspected and is familiar with the provisions of the Standard Specifications of the Marin Municipal Water District on file at the District office, 220 Nellen Avenue, Corte Madera, California, and agrees to be bound by them as part of this agreement. The Standard Specifications for the Marin Municipal Water District are made a part of this agreement as if set forth in full.

Supplier shall indemnify, hold harmless, defend and release District, its officers, directors, agents and employees from any and all liability, actions, claims, damages, costs, and expenses of suits, which may be asserted by any person or entity, including Supplier, arising out of or in connection with the activities of Supplier, its agents, and employees provided for herein whether or not there is concurrent passive negligence on the part of the District but excluding liability for District's sole negligence or willful misconduct. This indemnification obligation is not limited in any way by any limitation on the amount or types of damages or compensation paid by or for Supplier or its agents under workers' compensation acts, disability benefit acts, or other employee benefit acts.

Time is of the essence.

This writing is intended both as the final expression of the agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the agreement, pursuant to quote of the Civil Procedures Section 1856. No modification to this agreement shall be effective unless and until such modification is made in writing and signed by both parties.

Date

Signature

Print Name and Title

Company Name

Address

MARIN MUNICIPAL WATER DISTRICT

General Manager

Secretary, Board of Directors

WORKERS' COMPENSATION CERTIFICATE

I am aware of the provisions of Section 3700 of the Labor Code of the State of California which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract.

Date

Signature

Print Name and Title

Company Name

Address

NOT FOR BIDDING PURPOSES

WORKERS' COMPENSATION INSURANCE

Before contract execution, the Successful Bidder shall furnish to the District satisfactory proof that he has taken out, for the period covered by the proposed contract, full worker's compensation insurance with an insurance carrier satisfactory to the District. Such insurance shall cover all persons he may employ directly or through subcontractors in carrying out the work contemplated under the contract in accordance with the Act of the Legislature of the State of California known as the "Workers' Compensation Insurance and Safety Act", approved May 26, 1913, and all acts amendatory thereof or supplement thereto. Such insurance shall be maintained in full force and effect during the period covered by the contract.

All workers' compensation policies shall be endorsed with the following specific language:

"This policy shall not be cancelled without first giving thirty (30) days prior notice to Marin Municipal Water District by certified mail."

If the Supplier fails to maintain such insurance, the District may take out compensation insurance to cover any compensation which the District or Supplier might be liable to pay under the provisions of said Act, as amended, by reason of any employee of the Supplier being injured or killed while engaged in the execution of the work covered by the contract. The District will then deduct and retain the amount of the premiums for such insurance from any sums due the Supplier under the contract.

If any injury occurs to any employee of the Supplier for which the employee, or his dependents in the event of his death, is entitled to compensation from the District under the provisions of said Act as amended, or for which compensation is claimed from the District, the District may retain out of the sums due the Supplier under the contract an amount sufficient to cover such compensation as fixed by said Act as amended, until such compensation is paid or until it is determined that no compensation is due. If the District is compelled to pay such compensation, it will deduct and retain from such sums the amount so paid.

PUBLIC LIABILITY INSURANCE

Before contract execution, the Successful Bidder shall furnish to the District, satisfactory proof that he has adequate public liability insurance provided by insurers admitted to do business in the State of California, to protect himself against losses from liability for damages on account of bodily injuries, death, and/or property damage (including loss of use suffered or alleged to have been suffered by any person or persons), caused by or arising from the Supplier's performance under the contract. The District shall have the right to approve/disapprove any insurance carriers or forms.

The Successful Bidder shall provide Personal Injury/Bodily Injury and Property Damage Insurance for all activities of the Successful Bidder and its subcontractors arising out of or

in connection with this Contract, written on a commercial liability form including Supplier's protective coverage and completed operations insurance.

The following types of coverage shall be in effect at all times during the term of the Agreement:

- 1) Commercial General Liability, in an amount of not less than Two Million Dollars (\$2,000,000.00) per occurrence and a Five Million Dollar aggregate.
- 2) Auto Liability, in an amount of not less than Two Million Dollars (\$2,000,000.00) per occurrence and a Five Million Dollar aggregate.
- 3) Workers Compensation/Federal Employers Liability Act (FELA) coverage for its delivery driver(s) in an amount not less than One Million Dollars (\$1,000,000.00) per accident.

Additional Requirements Public/General Liability Insurance:

1. In addition to a satisfactory certificate of insurance, a list of the exclusion endorsements in the policy must be provided. Coverage must be provided for explosion.
2. The Commercial General Liability must be an occurrence form, rather than claims made.
3. The insurance carriers must be financially credible, with a rating from AM Best of at least A.
4. The Supplier shall provide either the District's Additional Insured Endorsement form (Page XIV-b) or a CG2010 form that contains the following endorsements:
 - a. Names the Marin Municipal Water District, its officers, directors, officials, agents, employees and volunteers (MMWD) as additional insurers.
 - b. Insurance to be primary concerning MMWD.
 - c. Notice of cancellation as follows: The insurance afforded by this policy shall not be cancelled except after thirty days prior written notice by certified mail return receipt requested has been given to the MMWD.
 - d. The inclusion of more than one insured shall not operate to impair the right of one insured against another insured, and the coverage afforded in the policy shall apply as though separate policies had been issued to each insured.

Each such policy shall be endorsed with the "Additional Insured Endorsement" form on Page X-b.

ADDITIONAL INSURED ENDORSEMENT

This endorsement modifies insurance provided under the following:

Commercial General Liability Coverage: Policy # _____

Policy Period _____

Automobile Liability:

Policy # _____

Policy Period _____

Excess Liability:

Policy # _____

Policy Period _____

INSURED: Name _____

Address _____

City/State/Zip _____

SCHEDULE

The Marin Municipal Water District, its officers, officials, agents, employees and volunteers (MMWD).

WHO IS AN INSURED

Is amended to include as an insured the organization shown in the schedule above.

1. The insurance shall be primary concerning the insured shown in the schedule above.
2. The insurance afforded by this policy shall not be cancelled except after thirty days prior written notice by certified mail return receipt requested has been given to the MMWD.
3. The referenced policy does not exclude explosion, collapse, underground excavation hazards or removal of lateral support.
4. The inclusion of more than one insured shall not operate to impair the right of one insured against another insured, and the coverage afforded in the policy shall apply as though separate policies had been issued to each insured.

Authorized Insurance Representative

Signature

Date

Print Name and Title

SPECIAL PROVISIONS

1.1 INQUIRIES

Any inquiries about this bid should be directed to the District's Purchasing Department at (415) 945-1402.

1.2 SCOPE OF CONTRACT

This contract is for the furnishing and delivery of motor fuels to various District locations set forth on the Bidding Sheet, pages IV and IV-a, and Bid Planning Schedule, page IV-b. It is the intent of this bid solicitation that an award will be made for a four (4) year term commencing on November 1, 2021 and ending October 31, 2025. The District has the option to extend the contract in one (1) year increments for an additional two (2) years. The Successful Bidder agrees to proceed with the performance of this agreement immediately upon the date of issuance of written notice, by the Marin Municipal Water District, to proceed with the work.

1.3 AWARD OF CONTRACT

The award of the contract will be made by the District to the lowest responsible bidder. It is anticipated that the District's Board of Directors will award this contract at their meeting held on October 5, 2021. The quality of the fuel to be supplied, conformity with the specification, suitability to the requirements of the District, and the delivery terms will be taken into consideration in making the award.

The District may reject any and all bids and will reject any bids of any party who has been delinquent or unfaithful in performance of any prior contract with the District or who is in default of surety or of any obligation to the District.

The contract shall be awarded to only one supplier for all work described in the contract documents unless otherwise stipulated.

1.4 BIDDING

The proposal shall be submitted in accordance with the Instructions to Bidders. The complete specifications returned intact with the proposal.

Except where specifications provide for alternative proposals, statements which serve to qualify the submitted proposal may disqualify the bid. It is requested that the District may waive any irregularities in any bid.

The total contract dollar amount shall be based on a fixed price differential mark up (or mark down) to the OPIS contract benchmark gross pricing standard daily rack average with California Carbon Allowance (CAR) costs per gallon for San Francisco, California as published by the Oil Price Information Service (OPIS) By IHS Markit in the OPIS Wholesale Rack Report for July 30, 2021 (**specific date used for bidding purposes only**), multiplied by the estimated yearly fuel quantities in gallons for each location on the Bidding Sheet.

Bidders shall bid a fixed price differential on each item separately. The bidder's fixed price differentials shall include transportation and delivery charges fully prepaid by the supplier to Marin Municipal Water District locations. The Successful Bidder's fixed price differential shall remain in effect during the Agreement period.

1.5 PRICING

Bidders shall quote a bidder's fixed price differential mark-up (or mark-down) to the OPIS contract benchmark gross pricing standard daily rack average with CAR costs for San Francisco, CA. published in the OPIS Wholesale Rack Report for July 30, 2021 for each of the types of fuel requested on the Bidding Sheet.

The bidder's fixed price differential must meet the following requirements:

- A. The bidder's fixed price differential shall be in U.S. Dollars per gallon (\$/gallon), must not exceed four (4) decimal places (e.g. \$0.1234), and must be listed on the Bidding Sheet.
- B. The bidder's fixed price differential should factor freight charges, bidder profit, and all miscellaneous charges that may be imposed by the bidder.
- C. For the purposes of clear bid comparison, the bidder's fixed price differential is to EXCLUDE any and all federal taxes, applicable California state sales or use taxes, and any applicable Superfund or Spill Fees. These taxes and fees are intentionally excluded from the Bidding Sheet for the purpose of price comparison only, but will be applied, as required, at the time of invoicing.
- D. The bidder's fixed price differential is to remain firm for the duration of the

contract agreement term and each option period exercised by the District thereafter.

The determination of the price payable for each delivery of gasoline and diesel fuels shall be accomplished by adding the bidder's fixed price differential to the OPIS contract benchmark gross pricing standard daily rack average with CAR costs as published by OPIS for San Francisco, CA. at the time of truck load on the date of order.

All prices shall be F.O.B. destination. Bids quoting other than F.O.B. destination will be rejected.

The District may receive the benefit of any rebates, allowances, or other price reduction incentives offered to customers of the contractor, including any pass-through incentives from the refineries.

No upward price adjustment shall be due the supplier when a contractor delay beyond the 24-hour notice causes a price increase after the District places an order, unless the contractor's failure to make earlier delivery results from causes which are beyond the control of and without fault of the contractor.

1.6 TAXES

Invoices shall include any and all federal taxes, applicable California state sales or use taxes, and any applicable Superfund or Spill Fees.

The District is exempt from paying Federal Excise Tax. A Federal Tax Exemption form shall be provided to the Successful Bidder by the District.

1.7 INVOICING AND PAYMENT

Each delivery location and fuel type for that delivery location shall be invoiced and/or credited separately and shall contain the following information: delivery location, number of gallons dispensed, price based upon the bidder's fixed price differential and the applicable OPIS contract benchmark gross pricing standard daily rack average with CAR costs for San Francisco, CA., applicable sales tax and surcharges, copies of signed delivery receipts and date of delivery.

Payment will be made after receipt of proper invoice following fuel delivery inspection and acceptance by the District. In the event cash discounts are involved; the District reserves the right to take such discounts.

Invoices to the District shall include the Purchase Order number and be sent to Accounts Payable via email to: accountspayable@marinwater.org.

In the event that email delivery is unavailable, invoices shall be mailed to the following address:

Marin Municipal Water District
Attn: Accounts Payable
220 Nellen Avenue
Corte Madera, CA 94925

Questions regarding billing and payment may be directed to Accounts Payable at (415) 945-1427.

1.8 RECORDS

The Successful Bidder shall maintain at all times complete, detailed records with regard to price changes and shall permit the District to inspect those records upon request at reasonable times for the purpose of determining the nature of those changes.

The Successful Bidder shall also maintain a running total of the District's fuel purchases by product and gallon.

1.9 SPECIFIC COMPLIANCE

All material, equipment, handling, or labor submitted under this bid by the Bidder shall meet the required standards of OSHA 1970 and Cal OSHA 1973, or as last revised, and orders or requirements issued under DOT (hazardous materials transportation) specifications. Bidder warrants that the described material, equipment or labor meets all appropriate OSHA safety and health requirements. Further, it warrants that the said material or equipment will not produce or discharge in any manner or form, directly or indirectly, chemicals or toxic substance that could pose a hazard to the health or safety of anyone who may use the material or equipment or come into contact with the material or equipment, and if so, mitigation is in place in accordance with OSHA standards. The current Material Safety Data Sheet (MSDS) for required materials, must be distributed to the District receiver of such material prior to or at the time of delivery.

The Bidder awarded the Contract resulting from this bid shall be in compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (41 USC 1857(h)), Section 508 of the Clean Water Act (33 USC, 1368), Executive Order 11738, ARB, and Prop. 65, including required postings, notices, and controls, and Environmental Protection Agency regulations (40 CFR, Part 15) that prohibit the use under nonexempt federal contracts, grants, and loans of facilities included on the EPA List of Violating Facilities. The Successful Bidder shall report violations to the applicable federal agency and the US EPA Assistant Administrator for Enforcement.

1.10

PRODUCT SPECIFICATION

The specifications are intended to describe Regular Unleaded Gasoline, 87 Octane; California Air Resources Board (CARB) Ultra Low Sulfur Diesel No. 2; Renewable (R99) CARB Ultra Low Sulfur Diesel No. 2 and Red Dye CARB Ultra Low Sulfur Diesel No. 2. All of these fuels are intended for use in a variety of motor vehicles, equipment, generators and motors, which are designed for these specific fuels.

Any delivered fuel which does not meet these specifications, or which is not to the satisfaction of the District, shall be deemed unacceptable and the Successful Bidder shall be responsible for pumping the unacceptable load of fuel from District's tanks and replacing the delivery of fuel to the satisfaction of the District. Any replacement fuel shall be provided to the District at a price not to exceed the contract unit price as defined herein. All products furnished as a result of this bid shall be in conformance with the State of California specifications shown below.

A. REGULAR UNLEADED GASOLINE, 87 OCTANE

Unleaded gasoline/ethanol blend (10% maximum ethanol) to be furnished shall comply with the requirements of ASTM D4814-09 and any addenda issued thereto, and all applicable federal regulations, and shall be unleaded gasoline/ethanol blend (87 octane rating). All Unleaded Gasoline supplied under this bid shall comply with all CARB requirements.

B. CARB ULTRA LOW SULFUR DIESEL NO. 2 & RENEWABLE (R99) CARB ULTRA LOW SULFUR DIESEL NO. 2

All diesel fuel supplied under this bid shall comply with all CARB requirements. It shall meet or exceed the requirements of the latest edition of ASTM D975 and shall meet sulfur content and the aromatic content in California Code of

Regulations, Title 13, section 2281 and section 2282. Renewable diesel should be treated the same as conventional CARB diesel for all purposes, including storage in underground storage tanks (USTs).

C. RED DYE CARB ULTRA LOW SULFUR DIESEL NO. 2

Diesel fuel is dyed red to denote it is being used for tax-exempt purposes by a tax-exempt entity. There is no difference in red-dyed product specifications. The need for red dye diesel is used for the District's off-road vehicles and emergency generators.

1.11 VIEW OF SITE AND TANK LOCATIONS

It is the responsibility of the Bidder to acquaint themselves with the property and to determine the best possible delivery method. Bidders must fully inform themselves of the conditions and requirements necessary to perform the scope of the work described herein. Failure to do so will be at the Bidders' own risk and they cannot secure relief on a plea of error.

1.12 DELIVERY LOCATIONS

All delivery locations that exist at the present time are indicated on the Bidding Sheet on page IV and a map of the locations is shown in Appendix B. Deliveries shall be made to all the prescribed locations on an "as needed" basis.

Please note, many of the delivery locations are semi-remote and access may only be possible over narrow winding roads. These roads may often limit delivery to trucks without trailers and in some instances smaller than normal trucks may be required. A lack of familiarity with a delivery location in no way relieves a contractor from the responsibility to fulfill the terms and conditions of the resulting contract. Due to limited space around the some of the District's storage tanks, the delivery locations which require a bobtail delivery are listed on the Bidding Sheet.

1.13 DELIVERY REQUIREMENTS

The Successful Bidder shall be required to complete all delivery requirements within twenty-four (24) hours from time of request unless otherwise specified by the District. A designated representative of the Successful Bidder shall be accessible by telephone to receive orders or other communications from the

District during normal business hours. A designated representative of the Successful Bidder shall also be made available at all times for emergency deliveries (see Paragraph 1.15 Emergencies).

Deliveries shall be made during District operating hours, Monday through Friday from 6:30 a.m. to 3:00 p.m. No deliveries will be accepted on weekends and Holidays recognized by the District (see Appendix A) unless otherwise specified by the District. Repeated failure to meet these criteria may result in termination of the agreement.

All fuel deliveries must be accompanied by a drop tag (or invoice) stating the tank size, level of fuel (in gallons) prior to delivery, the quantity of fuel delivered, the location of delivery, the level of water in the tank before delivery, the date, the time, and the signature of the delivering driver.

All deliveries shall be made in metered trucks. All deliveries shall be made at the delivery location with the attention of a District employee who is able to verify the metered delivery and attest to it by signature. This verification and the delivery information described in the above paragraph shall accompany (or be part of) the invoice presented to the District for each delivery.

If an order is placed for a truck and trailer quantity to be delivered to a truck and trailer location, and the Successful Bidder elects to make that delivery in a vehicle of lesser capacity, the Bidder shall not charge more than the truck and trailer prices prevailing at the time of delivery.

The District assumes no responsibility for motor fuel in route. All shipments remain the responsibility of the supplier until received and accepted by the District. Rejected fuel shall be removed at the cost of the supplier and the supplier shall bear all costs involved in returning such rejected motor fuel.

It is the Successful Bidder's responsibility to ensure they have a sufficient fleet in order to meet the needs of the District.

1.14

SERVICE INTERVALS

The District's storage locations, tank capacities and records of fuel consumption for each tank for fiscal year 2021 are provided on the Bidding Sheet and the Bid Planning Schedule, respectively. A map of the current delivery locations is also shown on Appendix B of this bid. The information provided is for the Bidder's convenience, but it is not intended to be, nor shall it be construed as, a guarantee of the District's future use.

The Corte Madera Corporation Yard gasoline 10,000 gallon gasoline underground storage tank and the 15,000 gallon diesel above ground storage tank shall be filled upon the telephone order of an MMWD designated representative. Deliveries to these tanks shall be made within twenty-four (24) hours from time of request unless otherwise specified by the District.

The District's other fuel storage tanks are the following: Sky Oaks Watershed Headquarters, a 2,000 gallon gasoline underground storage tank and a 1,000 gallon diesel above ground storage tank; Ignacio Booster Pump Station, a 3,000 gallon diesel above ground storage tank; Bon Tempe Treatment Plant, a 2,000 gallon diesel above ground storage tank; and San Geronimo, two (2) 10,000 gallon above ground diesel storage tanks. These other tanks shall be serviced by a bobtail (tank wagon or compartment fuel) delivery vehicle.

At times, it will be necessary to request small quantity deliveries of fuel for deliveries, etc., but in no case shall there be need for less than 100 gallons per delivery site.

The Successful Bidder shall not fill any of the District's fuel tanks above 90% of total tank capacity.

1.15

EMERGENCIES

The Successful Bidder shall provide the name and contact information of a representative who shall be available 24 hours a day, 7 days a week, in the event of an emergency (i.e. Public Safety Power Shutoffs [PSPS], long-term power outages, natural disasters, acts of terrorism). During emergencies, the Successful Bidder shall provide the District with all available supplies, materials, equipment and/or services on a priority basis.

Emergency deliveries may be required during evenings, weekends, and/or holidays. Time is of the essence for emergency deliveries. If not deliverable within four (4) hours after an emergency call has been placed, the District reserves the right to request delivery from another vendor.

If the emergency delivery is to be made during non-business hours, the Successful Bidder may charge an hourly rate not to exceed the hourly rate it has agreed to for this service on the Bidding Sheet, Page IV.

1.16

SAFETY REQUIREMENTS

All delivery vehicles used by the Successful Bidder for delivering fuel to the District's facilities shall be equipped and maintained for compliance with the current requirements of the California Public Utilities Commission, California Highway Patrol, and U.S. Department of Transportation.

All delivery drivers used by the Successful Bidder to deliver fuel to the District's facilities shall be appropriately licensed by the California Department of Motor Vehicles, shall be trained and experienced in proper fuel delivery procedures, shall be equipped with fittings compatible with the District's tanks and shall be capable of a knowledgeable response to problems or emergencies which could most commonly be expected to occur.

The Successful Bidder shall be responsible for cleaning, to the District's reasonable satisfaction, any spills and contamination of any kind resulting from the Successful Bidder's, its agent's, officer's or employee's performance under this Agreement. All such spills and leaks shall be immediately reported by the driver to the District.

The Successful Bidder shall assume responsibility for all expenses and damages incurred by the District by reason of a delivery accident, spill or contamination incident, including the costs of spill abatement, cleanup and repair or replacement.

1.17

OTHER REQUIREMENTS

Each bidder shall conform to California Business and Professions Code, Division 5. Weights and Measures, Chapter 14. Fuels and Lubricants, Article 11. Basis of Settlement, Paragraph 13520, to wit:

Basis of settlement: temperature-corrected gallonage - - "It is unlawful for any distributor, or any broker to sell any product to a retailer, or to any person, when the quantity distributed of any single delivery, to a single location, is 5,000 gallons or more, as or purporting to be gasoline or diesel fuel, unless the distributor or broker, as the case may be, offers to invoice the purchaser for such gasoline or diesel fuel on the basis of temperature-corrected gallonage to 60 degrees Fahrenheit, for all such deliveries to the purchaser, over a period of twelve (12) consecutive months, and settles his account with the purchaser on that basis."

Vapor recovery systems for gasoline must be on all contractor delivery systems and shall carry systems which are compatible with the vapor recovery system of each storage tank at each delivery site to which such gasoline is required to be

delivered.

Further, the vapor recovery system of each conveyance shall be in compliance with current regulations promulgated by the local or state authority, or the U.S. Environmental Protection Agency, whichever has authority over jurisdiction of recovery of gasoline vapors.

The Successful Bidder shall use reasonable care to avoid damaging or contamination of existing buildings, equipment, asphalt, soil or vegetation, at the District delivery sites. If the Successful Bidder fails to use reasonable care and causes damage or contamination, the Successful Bidder shall replace the damaged items or repair the damage at no expense to the District, and to the satisfaction of the District.

1.18 SAMPLING

The District may, at its discretion, request a sample from the Successful Bidder's delivery of motor fuel. In such case, the delivery driver may be required to draw a one (1) gallon sample from the load.

The sample container will be furnished by the District.

The District reserves the right to send the fuel sample(s) to an independent testing laboratory for analysis.

Should the laboratory analysis indicate the fuel does not meet the District's specifications; the Successful Bidder may be required to remove and replace the product at the Bidder's expense.

Failure to meet the District's specifications may be cause for termination of this Agreement and the Purchase Order, which it enables.

1.19 ALLOCATION

The District recognizes that the Successful Bidder's obligation to perform is subject to modification and reduction in accordance with any federal, state or local government mandate which governs the allocation of motor fuels and is imposed during the term of this Agreement. In the event of such legislation or order, the District may be required to terminate the Agreement on the effective date of the allocation mandate.

1.20 AMENDMENTS TO THE BID

Any amendment to this bid is valid only if in writing and signed by the District.

1.21 CONFLICT OF INTEREST

The Bidder states that no District officer or employee, nor any business entity in which they have an interest: a) Has an interest in the bid awarded; b) Has been employed or retained to solicit or aid in the procuring of the resulting Agreement; c) Will be employed in the performance of such Agreement without immediate disclosure of the fact to the District. The Successful Bidder covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services under this Agreement. The Successful Bidder further agrees that in the performance of this Agreement no person having any such interest shall be employed.

1.22 PROSECUTION OF WORK

The issuance of the Purchase Order (P.O.), which follows the District's acceptance of the winning bid and the execution of a formal Agreement by the parties, shall constitute the Successful Bidder's authority to proceed immediately with the performance of this Agreement. If the Successful Bidder's start of performance is delayed by earthquake, flood, high water or other natural catastrophe (Acts of God), or by strike, lockout or similar labor disturbance, the time for performance shall be extended by the number of days equal to the number of days the Successful Bidder has been delayed by the Acts.

1.23 NON-DISCRIMINATION IN EMPLOYMENT

The Successful Bidder must comply with all applicable federal, state and local laws, rules and regulations in regard to non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or handicaps.

1.24 INDEMNIFICATION OF THE DISTRICT

The District is relying on the ability, knowledge and experience of the Successful

Bidder as a material inducement to enter into the Agreement. The Successful Bidder warrants that all its work will be performed in accordance with generally accepted practices and standards within its particular supply industry, as well as the requirements of applicable federal, state and local laws. The parties agree that the acceptance of the Successful Bidder's products shall not operate as a waiver or release.

The Successful Bidder shall indemnify, hold harmless, release and defend the District, its officers, agents, volunteers and employees from and against any and all actions, claims, damages including, but not limited to, pollution, contamination and explosion damages, disabilities, expenses, and liabilities of any kind, including attorney's and expert witness fees and witness and litigation costs that may be asserted by any person or entity, including the Successful Bidder, its officers, agents, employees and/or subcontractors, arising out of the Successful Bidder's, its officer's, agent's and employees' negligent or intentional acts, errors or omissions in connection with this Agreement, the materials provided and all of the activities necessary to perform the services and complete the tasks provided for in the Agreement, but excluding liabilities due to the sole negligence or willful misconduct of the District.

This indemnification is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for the District or its agents under workers' compensation acts, disability benefits acts or other employee benefits acts.

1.25 SEVERABILITY OF THE AGREEMENT

Each provision of the Agreement is intended to be severable. If any term or any provision is determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, the provision shall be severed from this Agreement and shall not affect the validity of the remainder of the Agreement.

1.26 TERMINATION OF THE AGREEMENT

At any time and without cause, the District shall have the right, in its sole discretion, to terminate the Agreement by giving written notice to the Successful Bidder. In the event of such a termination, the District shall pay the Successful Bidder for products delivered up to the termination date.

If the Successful Bidder should fail to perform any of its obligations hereunder, within the time and manner provided herein, or otherwise violate any of the

terms of the Agreement, the District may terminate the Agreement by giving the Successful Bidder notice of the termination, stating the reason for the termination. In that event, the Successful Bidder shall be entitled to receive payment for all materials received and services satisfactorily rendered, less any amount of material damages sustained by the District as a result of the failure to perform.

1.27 DISPUTE RESOLUTION

The following provision shall apply to all claims not subject to Public Contract Code Sections 20104 et seq.:

MEDIATION

Any dispute or claim in law or equity between the District and the Successful Bidder arising out of this Agreement, if not resolved by informal negotiation between the parties, shall be mediated by referring it to the nearest office of Judicial Arbitration and Mediation Services, Inc. (JAMS) for mediation. Each party shall provide the others with a list of four mediators. The parties shall confer on the list and select a mutually agreeable mediator. Mediation shall consist of an informal, non-binding conference or conferences between the parties and the judge-mediator jointly, then in separate caucuses wherein the judge will seek to guide the parties to a resolution of the case. If the parties cannot agree to a mutually-acceptable member from the JAMS panel of retired judges, a list and resumes of available mediators numbering one more than there are parties will be sent to the parties, each of whom will strike one name leaving the remaining name as the mediator. If more than one name remains, JAMS' administrator will choose a mediator from the remaining names. The mediation process shall continue until the case is resolved or until the mediator makes a finding that there is no possibility of resolution.

ARBITRATION

At the sole election of the District, any dispute or claim in law or equity between the District and the Successful Bidder arising out of this Agreement which is not settled through mediation shall be decided by neutral binding arbitration and not by court action, except as provided by California law for judicial review of arbitration proceedings. The arbitration shall be conducted in accordance with the rules of Judicial Arbitration Mediation Services, Inc. (JAMS). The parties to an arbitration may agree in writing to use different rules and/or arbitrators.

APPENDIX A

NOT FOR BIDDING PURPOSES



Marin Municipal Water District

District Observed Holidays

NEW YEARS DAY

MARTIN LUTHER KING'S BIRTHDAY

PRESIDENT'S DAY

MEMORIAL DAY

INDEPENDENCE DAY

LABOR DAY

VETERAN'S DAY

THANKSGIVING DAY

DAY AFTER THANKSGIVING

CHRISTMAS EVE DAY

CHRISTMAS DAY

APPENDIX B

NOT FOR BIDDING PURPOSES



Ignacio Pump Station
13 Hamilton Dr.
Novato, CA 94949

San Geronimo Treatment Plant
330 San Geronimo Valley Dr.
Woodacre, CA 94973

Sky Oaks Ranger Station
49 Sky Oaks Rd.
Fairfax, CA 94930

Corporation Yard
220 Tamal Vista Blvd.
Corte Madera, CA 94925

Bon Tempe Treatment Plant
Filter Plant Rd.
Main County, CA

 **MARIN MUNICIPAL WATER DISTRICT**
220 NELLEN AVE., CORTE MADERA, CA 94925 (415) 924-4600

DATE: JULY 2021 JOB NO: _____ SHEET: 1 OF 1

PREPARED BY: JJ DESIGN BY: _____

**MARIN WATER
FUEL DELIVERY
LOCATIONS**

APPENDIX C

NOT FOR BIDDING PURPOSES

**STANDARD SPECIFICATIONS
GENERAL SPECIFICATIONS**

Marin Municipal Water District
220 Nellen Avenue
Corte Madera, CA 94925

March 2019

MARIN MUNICIPAL WATER DISTRICT

1. DEFINITIONS

Whenever any of the following words or expressions, or pronouns in place of them, are used in the specifications or contract, they shall be understood to have the meanings given below:

BIDDER – Any individual or entity submitting a proposal for the proposed work.

CERTIFIED – Reference to certified documents in regard to the Labor Code are document forms that have been certified by the California State Department of Industrial Relations.

COMPETENT PERSON – a competent person, as defined by OSHA is “one who is capable of identifying existing or predictable hazards in the surroundings or working conditions which are unsanitary, hazardous or dangerous to employees and who has authorization to take prompt corrective measures to eliminate them”.

CONTRACT – The written agreement between the District and the Contractor covering the work. All contract documents shall be deemed part of the contract.

CONTRACT BONDS – The surety bonds furnished by the Contractor’s surety as a guaranty that he will (1) complete the work in accordance with the terms of the contract; (2) secure the payment of claims for labor and materials used in or for the work; and (3) guarantee maintenance of the facilities for the time period specified in the contract documents.

CONTRACT DOCUMENTS – The contract documents shall include the Invitation for Proposal, the Notice to Contractors, the Proposal, the Bidding Sheet Schedule, the Contractor’s Experience and Financial Qualifications Sheet, the Contractor’s References, the Designation of Subcontractors form, the Contract bonds, the standard specifications, general specifications, technical specifications, reference specifications, supplemental specifications, general and detailed plans or drawings, special provisions, all executed supplemental agreements, addenda, permits, the contract, all general or special provisions pertaining to the work or materials, and all modifications issued after contract execution.

CONTRACTOR – The individual who or entity which has executed a contract with the District to perform the work specified in the contract documents. Under these specifications, Contractor shall include owners, partners, officers and agents authorized to act on behalf of the individual or entity under contract with the District.

CONTRACTOR'S EMPLOYEES – Any persons engaged in the execution of work under this contract, as direct employees of the Contractor or as employees of subcontractors.

DATE OF SIGNING THE CONTRACT (or words equivalent) – The date upon which the contract for the proposed work with the signature of the Contractor affixed thereto, together with the bond prescribed by law, is signed by the District.

DISTRICT – The Marin Municipal Water District, acting directly or through properly authorized agents, limited by the particular duties entrusted to them.

EMPLOYEE – any person employed by the Contractor who is not under a separate contract with the Contractor (see definition of subcontractor).

ENGINEER – The Manager of Engineering for the District, or his duly authorized representative, limited by the particular duties entrusted to him.

INSPECTOR – The authorized representative of the Engineer assigned to make a detailed inspection of any or all portions of the work or materials therefore.

MATERIAL OR MATERIALS – These words shall be construed to include construction materials (fabricated or otherwise), manufactured articles, machinery, and any other classes of materials or supplies, including the use of equipment and consumption of power and supplies, to be furnished in connection with the contract, except where a more limited meaning is indicated by the contract documents.

PLANS OR DRAWINGS – All drawings made by or for the District pertaining to the work included in the contract documents.

PROPOSAL - The written submittal which the bidder delivers to the District in response to an "Invitation for Proposal" and which sets forth the price(s) for which the Bidder offers to perform the proposed work.

PROPOSAL GUARANTEE – The certified check, cash, cashier's check, or bid bond to be furnished by the Bidder as a guarantee of execution of contract for the work if the Bidder is awarded the contract.

PROVIDE – To furnish and install.

REFERENCE SPECIFICATIONS – Those bulletins, standards, rules methods of analysis or test, codes, and specifications of other agencies, engineering societies, or industrial associations referred to in the contract documents. These refer to the latest edition, including amendments in effect and published at the time of advertising the project, unless specifically referred to by edition, volume, or date.

REMOVE – To dismantle and dispose of off-site.

SPECIAL PROVISIONS – The special provisions are specific clauses which set forth conditions or requirements particular to the project and which supplement or modify sections of the standard specifications.

SPECIFICATIONS – The written direction, provisions, and requirements pertaining to the work. The specifications include the special provisions, technical specifications, standard specifications, reference specifications and any attachments necessary, including addenda, to provide direction in regard to the work under this contract.

STANDARD SPECIFICATIONS – The standard specifications of the District.

SUBCONTRACTOR – An individual or entity under a written or verbal contract with the Contractor for the execution of any part of the work.

SUCCESSFUL BIDDER – The bidder to whom the District awards the contract.

SURETY – The individual or entity which the Contractor engages (through binding agreement) to assume liability for all debts and responsibility for the acceptable performance and/or maintenance of work under this contract if the Contractor defaults.

TECHNICAL SPECIFICATIONS – Technical specifications are that portion of the contract documents which delineate the work, materials, workmanship and payment aspects of bid items included on the Bidding Sheet Schedule of the contract.

(THE) WORK – That which is to be constructed or done under the contract in accordance with the contract documents.

2. TERMS

Unless otherwise stated, wherever words “as directed”, “as required”, “as permitted”, or words of like effect are used, it shall be understood that the direction, requirement or permission of the Engineer is intended. The words “sufficient”, “necessary”, “proper”, and the like, shall mean sufficient, necessary, or proper in the judgment of the Engineer. The words “approval”, “acceptable”, “satisfactory”, or other words of like import shall mean approved by, or acceptable to, or satisfactory to the Engineer.

3. WORK TO BE DONE TO THE SATISFACTION OF THE DISTRICT

The Contractor shall furnish all labor, materials, tools, and equipment, except as otherwise expressly specified, that are necessary or proper for completion of the work according to the contract. Work shall be performed and materials provided to the satisfaction of the District.

4. SATISFACTION OF DISTRICT

Whenever in these specifications the satisfaction of the District must be met and the District makes a determination in good faith of satisfaction or dissatisfaction, such determination shall be final and binding upon all parties.

5. ENGINEER TO DIRECT THE WORK

Work shall be performed under the general direction of the Engineer. At his discretion, he may from time to time, choose the order and location of work to be done. He may also, at his discretion and at any time, exercise general control over the work, to safeguard the interests of the District.

The Contractor shall immediately comply with any and all orders and instructions given by the Engineer. Nothing herein shall be construed to relieve the Contractor of any of his obligations or liabilities under the contract.

6. COMPLIANCE WITH CONTRACT DOCUMENTS

The Contractor must strictly comply with all requirements of the contract documents. Variance from such requirements shall be permitted only upon the advance written consent of the Engineer. The Contractor may not rely upon any actual or alleged oral statement or representation of anyone purporting to waive, alter, or amend any such requirements.

7. PRECEDENCE OF CONTRACT DOCUMENTS

Inadvertent conflicts between sections of the Contract Documents may occur. If there is a conflict among contract documents, the document highest in precedence shall control. The order of precedence shall be:

- a. Change Orders
- b. Special Provisions
- c. Contract Drawings
- d. Technical Specifications
- e. Standard Plans
- f. Standard Specifications
- g. Reference Specifications

Change orders, supplemental agreements and approved revisions to plans and/or specifications will take precedence over documents listed above.

In cases of a conflict between District specifications and local jurisdiction permit requirements, the Engineer shall determine precedence. Any changes in permit

requirement shall be submitted in writing to the District for approval prior to installation of affected project components.

8. INTERPRETATION OF SPECIFICATIONS

Any discrepancy in, or misunderstanding of the contract documents shall be immediately referred to the Engineer. The Engineer shall clarify the true intent and meaning of the contract documents, and any decision rendered shall be binding on the Contractor. The Contractor will not be allowed to take advantage of any error or omission in the plans and specifications. Suitable instructions will be given or corrections made when such error or omission is discovered.

9. DRAWINGS

The location and general arrangement of the facilities to be installed under the contract are as shown diagrammatically on the contract drawings.

Additional drawings that may be necessary will be supplied by the District during the progress of the work, and such drawings shall become a part of the contract documents.

10. DRAWINGS REQUIRED OF CONTRACTOR

Within 30 calendar days after execution of the contract, the Contractor shall submit to the Engineer any drawings, catalog cuts, specifications, lists and graphs as required under these specifications. Such submittals shall be reviewed and approved by the Contractor in regard to conformance to contract plans and specifications prior to submittal to the District. They shall become part of the contract documents upon the District's approval. Unless otherwise specified, five (5) copies of these materials shall be submitted. If the materials submitted by the Contractor are in accord with acceptable practice and meet the requirements of these specifications, the Engineer will return one set marked "no exceptions noted" within 15 working days after their receipt at the Engineer's office; otherwise said data will be returned to the Contractor within the 15 working day period with a statement of the points found unsatisfactory. In such a case the Contractor, at his own expense, shall proceed at once to revise said materials until they shall be found satisfactory by the Engineer. No fabrication shall start prior to the time the materials are determined to be satisfactory. The Contractor shall have no claim for damages or extension of time because of any delays for revisions found necessary to fulfill the requirements of these specifications. Regardless of such delays, the Contractor shall be liable to the District for any failure to complete the work as required by the contract documents. Revisions of said materials shall be considered as changes necessary to meet the requirements of the specifications and shall not be taken as the basis of claims for extra work.

Neither the inspection nor lack of inspection of any such materials shall constitute a waiver of any requirements of the contract documents or relieve the Contractor of any

obligations thereunder. In addition, any deviation from the contract documents (including shop drawings, etc.) shall be brought to the attention of the Engineer by written notice. Defective work, materials, and equipment may be rejected notwithstanding conformance with drawings, catalog cuts, specifications, lists and graphs inspected by the Engineer.

11. SHORING PLAN

Prior to excavation of any trench five (5) feet or more in depth, the Contractor shall submit to the District a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground. If the plan varies from the standard shoring systems indicated in the State Division of Industrial Safety, CAL/OSHA Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer. No excavation shall start until the Engineer has accepted the plan and the Contractor has furnished the Engineer with a copy of the CAL/OSHA permit pertaining to the work. In addition, no excavation shall be allowed until the Contractor furnishes the Engineer with a copy of the project notification forms or (letters) he has forwarded to the CAL/OSHA District Office.

12. BONDS

As a part of the contract execution, the Contractor shall file with the District two corporate surety bonds, each in the sum not less than 100% of the total contract price. The "Performance Bond" is to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to the District, and that all material and workmanship will be free from original or developed defects. The "Payment Bond" (Material and Labor Bond) is to satisfy claims of material suppliers and of mechanics and laborers employed by the Contractor on the work. The bonds shall be maintained by the Contractor in full force and effect until the work is accepted by the District, and until all claims for materials and labor are paid. Upon completion of the contract work, the Contractor shall provide the District with a maintenance bond as specified in Article 27 of these general specifications.

Should any bond become insufficient, the Contractor shall increase or replace the bond as necessary within 10 days after receiving notice from the District.

Should any Surety at any time be unsatisfactory to the District, notice will be given the Contractor to the effect. No further payments shall be deemed due or will be made under the contract until a new Surety shall qualify and be accepted by the District.

Changes in the work, or extensions of time, made pursuant to the contract, shall in no way release the Contractor or Surety from their obligations. Notice of such changes or extensions shall be waived by the Surety.

13. WORKERS' COMPENSATION INSURANCE

Before contract execution, the Successful Bidder shall furnish to the District satisfactory proof of compliance with Labor Code Section 3700 which requires every contractor to secure the payment of compensation to his employees, and to be insured against liability for workers' compensation. All workers' compensation policies shall be endorsed with the following specific language: "This policy shall not be cancelled without first giving thirty (30) days prior notice to the Marin Municipal Water District by certified mail."

14. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

Before contract execution, the Successful Bidder shall furnish to the District satisfactory proof that he has the insurance coverage described on Pages XIV and XIV-a of the legal section of these specifications.

The required minimum amount of public liability insurance may be increased if in the judgment of the District, conditions on the work warrant such increase. The Contractor shall increase the amounts of the insurance in accordance with any such determination by the District.

If the Contractor fails to maintain such insurance, the District may take out Public Liability Insurance covering the District for any damages caused by or arising from the Contractor's performance under the contract, and deduct the amount of the premiums for such insurance from any sums due the Contractor under the contract.

Contractor shall forward any third party claims for personal injury or property damage made against District which are alleged to have been caused by Contractor to Contractor's public liability insurance carrier as soon as they are brought to Contractor's attention if they are not paid immediately by Contractor. Contractor shall cooperate with the District in the evaluation of such claims to assure their speedy resolution. Nothing herein contained shall be construed as limiting in any way the extent to which the Contractor may be held responsible for payment of damages resulting from his operations.

15. PERMITS, LICENSES AND FEES

The Contractor shall procure all necessary permits and licenses, pay all charges and fees (including fees for encroachment, special, and street (opening permits) and give all notices necessary for the due and lawful prosecution of work unless otherwise expressly provided. The Contractor shall furnish the District with copies of all permits, licenses and notices procured by him for prosecution of the work.

The Contractor shall pay all sales taxes and fees levied on material, supplies, or equipment purchased by him and used on or incorporated into the work, and all other taxes properly assessed against his equipment or property used in connection with the work.

The Contractor shall conform to the requirements of permits issued by jurisdictions in the project area regardless of the party who applied for the permit. Failure to comply with requirements of the jurisdictions or the District's efforts to comply with those requirements, shall be deemed a breach of contract and may result in termination of the contract.

In cases of a conflict between District specifications and local jurisdiction permit requirements, the Engineer shall determine precedence. Any changes to permit requirements shall be submitted in writing to the District for approval prior to installation of affected project components. The permit changes shall be authorized by the permitting jurisdiction and any cost adjustments shall be negotiated between the Contractor and the District.

16. PROGRESS SCHEDULE AND ORDER OF COMPLETION

To insure completion of the work within the time limits specified, and to assist the District in the scheduling of other work, the contractor shall submit to the District within five (5) working days after the Award of Contract, a detailed schedule showing the proposed dates of beginning and completion of all significant items of work under the contract. If the actual progress of the work varies materially from the proposed schedule or if the Contractor proposes to change it for any reason, he shall submit to the District the revised construction schedule which he proposes to follow. The proposed original and revised schedule shall be adequate, in the opinion of the District, to meet the requirements for completion of the work as herein set forth. If, in the opinion of the District, the Contractor's proposed schedule or the actual progress of the work is insufficient to meet the specified requirements, the Contractor shall take such steps as are necessary to accomplish the required progress and completion. When in the judgement of the District, it is necessary to accelerate any part of the work ahead of schedule, the Contractor shall, when directed, concentrate his efforts on such part of the work. The District reserves the right to reschedule work due to lack of timely submittal of schedules or notification of schedule changes.

17. LAWS AND REGULATIONS

The Contractor shall keep himself fully informed of and shall strictly comply with all laws, regulations and orders of properly constituted authorities affecting the contract, the material to be supplied, the work to be done, and the persons connected with the work. Persons authorized by the District or any such authorities may at any time enter upon any part of the work to ascertain compliance with such laws, regulations or orders.

18. LICENSING OF CONTRACTORS

The Contractor shall have a valid license issued by the Contractor's State License Board for the class of work covered by this contract during the entire term of this contract. The District may prohibit the Contractor from performance of any part of the contract until he

is properly licensed. No such prohibition placed on the Contractor shall constitute grounds for any delay in any completion date or time agreed upon in the contract.

19. CONTRACTOR'S LEGAL ADDRESS

The address given on the proposal is designated as the legal address of the Contractor, but such address may be changed at any time by written notice delivered to the District. The delivery or deposit of any drawing, notice, letter or other communication to such legal address, post office or U.S. Postal Service box shall constitute legal and sufficient service upon the Contractor.

20. SUBCONTRACTS, ASSIGNMENTS

The Contractor shall constantly give his personal attention to the faithful prosecution of the work; he shall keep the work under his personal control and shall not assign nor subcontract the whole or any part thereof, except as provided herein.

The Contractor shall not substitute any other person or firm in the place of any of the subcontractors stated in the contract documents, nor shall any subcontractor assign or transfer his subcontract or permit the same to be performed by any other Contractor, without the written approval of the District. If the Contractor fails to specify a subcontractor for any portion of the work to be performed under this contract, he has agreed to perform such portion of work without subcontracting and shall not be permitted to subcontract that portion of work except as hereinafter provided. Should the Contractor subcontract any portion of the work for which he has not named a subcontractor nor received District consent, he is in material violation of the contract and the District has the right to cancel the contract.

In regard to sub-contractors indicated in the contract documents, the District may request that the Contractor submit a copy of each contract which he proposes for subcontractor for assignment of any portion of the work. Whenever a contractor or subcontractor subcontracts work with a value of 25% or more of the total contract price, the contractor or subcontractor shall submit information to the District regarding those parties to whom the subcontracts are to be assigned. This information will enable the District to determine the responsibility and standing of the proposed subcontractor or assignee. No subcontract or assignment will be approved unless the original contract between the Contractor and the District is made a part thereof, nor unless it appears to the District that the proposed subcontractor or assignee is in every way reliable, responsible and fully able to perform and complete the portion of the work covered by the proposed subcontract or assignment. Should the District determine that any subcontractor does not have the experience or financial qualifications to perform said portion of the work, or that he is unable to provide in due time the necessary labor, materials, tools or equipment to perform said portion of the work, or is otherwise unacceptable, the Contractor shall be notified in writing. He shall then substitute an acceptable subcontractor or shall perform said work without subcontracting it.

Subsequent to contract execution, any proposal to subcontract any portion of the work in excess of one half of one percent of the total original bid amount must comply with Public Contract Code Section 4100 et seq.

No subcontract or assignment shall relieve the Contractor or his Sureties of any liability or obligation under the contract.

21. ANTITRUST CLAIMS

The Contractor is notified pursuant to Government Code Section 4551 that:

In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 commencing with Section 16700 – of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgement by the parties.

22. FAIR EMPLOYMENT PRACTICES

This contract is subject to the provisions of the California Fair Employment and Housing Act (Government Code Section 12900 et seq.) which state that the Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of sex, race, color, religion, ancestry, or national origin. The Contractor and subcontractors shall take affirmative action to ensure that employment of applicants and treatment of employees conform to the code. Such action shall include, but be not limited to the following areas of consideration: Employment standards, qualifications, reclassifications, job upgradings, demotions, transfers, recruitments, recruitment advertisements, layoffs or terminations, payment rates or other forms of compensation, and selection for training, including apprenticeship. The Contractor and subcontractors shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State setting forth the provisions of said Act.

The Contractor and any subcontractors under him shall permit access to records of employment, employment advertisements, application forms, and other pertinent data by the California Fair Employment and Housing Commission, or any other agency of the State designated to investigate compliance with this article.

23. WAGES, HOURS, APPRENTICES

- a. Prevailing Wage. Pursuant to the statutes of the State of California, the State Director of Industrial Relations has ascertained and determined the general prevailing rate of per diem wages, and rates for overtime and legal holidays, in the locality in which this work is to be performed for each craft or type of worker or mechanic needed to execute the Contract. The prevailing rates so determined are available for inspection at the Agency office and form a part of the Contract Documents. The Contractor shall post at the job site(s) a copy of the applicable determinations by the State Director of the prevailing rate of per diem wages.

The Contractor shall be responsible for compliance with Section 1775 of the Labor Code, which reads in part as follows: "The contractor shall as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit fifty dollars (\$50) for each calendar day, or portion thereof, for each workman paid less than prevailing rates as determined by the director for such work or craft in which such workman is employed for any public work done under the contract by him or by any subcontractor under him. The difference between such prevailing wage rates and the amount paid to each workman for each calendar day or portion thereof for which each workman was less than the prevailing wage rate shall be paid to each workman by the contractor." Any individual who is not a subcontractor for the Contractor shall be considered an employee and shall be paid prevailing wage rates in accordance with the Labor Code as mentioned above.

- b. Eight Hour Day Limitation. In accordance with the provisions of Article 3, Chapter 1, Part 7, Division 2 of the Labor Code, State of California, and in particular Sections 1810 to 1815 thereof, inclusive, eight (8) hours labor shall constitute a day's work and no laborer, worker, or mechanic in the employ of said Contractor, or any subcontractor doing or contracting to do any part of the work contemplated by this Contract, shall be required or permitted to work more than eight (8) hours in any one calendar day, and forty (40) hours in any one calendar week, except as provided for in Section 1815. Section 1815 provides that work performed by employees of the Contractor in excess of eight (8) hours per day or forty (40) hours per week shall be permitted upon public works projects, provided such excess work hours are compensated at one and a half times prevailing wage rates. The Contractor shall be subject to compliance with Section 1813 of the Labor Code, which reads in part as follows: The contractor shall, as a penalty to the State or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each workman employed in the execution of the contract by the contractor or by any subcontractor for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article.
- c. Payroll Records. The Contractor shall be responsible for compliance with Section 1776 of the Labor Code, which reads, in part, as follows:

- (1) Each Contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the public work.
- (2) The payroll records enumerated under subdivision a. shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - (a) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
 - (b) A certified copy of all payroll records enumerated in subdivision a. shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - (c) A Certified copy of all payroll records enumerated in subdivision a. shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.
- (3) Each Contractor shall file a certified copy of the records enumerated in subdivision a. with the entity that requested the records within 10 days after receipt of a written request.
- (4) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or performing the contract shall not be marked or obliterated.

- (5) The Contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision a., including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
- (6) In the event of noncompliance with the requirements of this section, the Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this section. Should noncompliance still be evident after the 10-day period, the Contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated.
- d. Apprentices. Attention is directed to the provisions in Section 1777.5, 1777.6, and 1777.7 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under him. The Contractor shall be responsible for compliance with Section 1777.5, if applicable, which reads, in part, as follows:

“The contractor or subcontractor, if he is covered by this section, upon the issuance of the approval certificate, or if he has been previously approved in such craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the contractor that he employs apprentices in such craft or trade in the state on all of his contracts on an annual average of not less than one apprentice to each five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 ratio as set forth in this section. This section shall not apply to contracts of general contractors involving less than thirty thousand dollars (\$30,000) or 20 working days or to contracts of specialty contractors not bidding for work through a general or prime contractor, involving less than two thousand dollars (\$2,000) or fewer than five working days.”

24. CERTIFIED PAYROLL SUBMITTALS AND COST DATA

The Contractor and any subcontractors under him, shall comply with the requirements of Labor Code Section 1776 regarding payroll records and shall submit to the Engineer certified copies of payroll records as required by Labor Code Section 1776(a) on a weekly basis.

In addition, for the District to fairly and accurately ascertain the cost of any item of work, the Contractor will be required to maintain, on a daily basis, a full detailed report of the previous day's work. This report shall show the number and names of persons employed, the hours worked at each rate of pay, the time and cost of rental of each piece of equipment used, the amount and cost of each class of material used, and any other costs to the Contractor, all as applied to each subdivision of the work. Typical forms of the

report will include daily timecards, payrolls, vouchers, invoices, etc. The reports will provide a clear distinction between the direct costs of extra work paid for on a force account basis and the costs of other operations. The daily reports must be submitted with all extra work claims paid for on a force account basis, and as otherwise requested by the Engineer.

25. TRAVEL AND SUBSISTANCE PAY

- a. As required by Section 1773.8 of the California Labor Code the Contractor shall make travel and subsistence payments to each worker needed to execute the work. Such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with this Section.
- b. To establish such travel and subsistence payments, the representative of any craft, classification, or type of worker needed to execute the contracts shall file with the Department of Industrial Relations fully executed copies of collective bargaining agreements for the particular craft, classification or type of work involved. Such agreements shall be filed within ten (10) days after their execution and thereafter shall establish such travel and subsistence payments whenever filed thirty (30) days prior to the call for bids.

26. GUARANTEE

The Contractor guarantees that all work performed by him, and all structures furnished and installed or constructed by him under this contract, will fully meet all requirements of the contract documents.

For a period of two years after final acceptance of the work, the Contractor shall guarantee his workmanship by agreeing to maintain all of the facilities or structures furnished and installed or constructed by him under the contract. Partial use or occupancy of the work by District prior to final acceptance of the entire work shall not be deemed to start the guarantee period. Should any installed facilities fail to fulfill any of the requirements of the contract, the Contractor shall promptly repair or replace unsatisfactory material and repair any facilities as directed by the Engineer. Such repairs and replacements shall not inconvenience the District. All costs shall be borne by the Contractor. The Contractor shall not be liable for damage caused by other parties who damage facilities installed by the Contractor.

Should the Contractor fail to act promptly in accordance with this requirement, or should the circumstances require repairs or replacements before the Contractor can be notified or can respond to notification, the District may at its option, make the necessary repairs or replacements, and the Contractor shall pay to the District all costs of such repairs, including applicable overhead.

The Contractor shall be responsible for the full cost incidental to making good any and all of the above guarantees and agreements. The above guarantees and agreements are covenants, the performance of which shall be binding upon the Contractor and his sureties.

27. MAINTENANCE BOND

To insure the District of the protection which the guarantee is to provide, the Contractor shall, except where otherwise specified, provide a surety bond in the amount of 25% of the final total contract price. The final total contract price shall include contract adjustments, extra work and credits. It shall not include overtime chargeable to the Contractor, liquidated damages and other adjustments unrelated to specific work items. The bond must be delivered to the District by the Contractor following the semi-final payment in order that the Notice of Completion can be recorded. The bond may be included in combination with a performance and/or payment bond, but in no case shall the maintenance bond be less than 25% of the final total contract price. The maintenance bond shall be in effect for two years following the date Notice of Completion is recorded unless otherwise specified.

In the event that the Contractor must repair installed facilities within the two year maintenance period, the Contractor shall provide an additional one year maintenance bond covering the repaired facility as determined by the Engineer

28. REASONABLE ASSURANCES

Each party to this agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise, with respect to performance of either party, the other may, in writing, demand adequate assurance of due performance and until the requesting party receives such assurance may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of the party with respect to performance under this agreement but also conduct with respect to other agreements with parties to this agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, not to exceed 30 days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

29. WORK INCLUDED

The Contractor shall perform all work as described in the contract documents. In the performance of the work, the Contractor shall furnish all material not specifically indicated as being furnished by the District and shall install all necessary material, whether furnished by the District or by the Contractor, as indicated in the contract

documents. All work shall be so performed that upon completion of the contract, the work is ready for use.

30. WORK AND MATERIAL QUALITY

All work shall be performed in a workmanlike manner in conformity with the best accepted construction and installation practices. Unless otherwise specified, work shall be performed at a minimum in accordance with the applicable sections of the current standards of the American Water Works Association (AWWA), the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), the American Welding Society (AWS), the National Electrical Manufacturing Association (NEMA), the Instrument Society of America (ISA), the Uniform Building Code (UBC), the American Concrete Institute (ACI), and other generally accepted national quality control organizations which issue standard specifications.

Material or manufactured articles shall be new and shall be of the best grade, in quality and workmanship, obtainable in the market from firms of established good reputation, or, if not ordinarily carried in stock, shall conform to the usual standards for first class material or articles of the kind required, with due consideration of the use to which they are to be put. In the event that requirements for any materials to be used in the work are not specifically set forth in these specifications, the Contractor shall submit information regarding the materials he intends to use to the Engineer for the District's written approval prior to use in the work.

31. RESPONSIBILITY OF CONTRACTOR

Except as indicated under changed conditions (Article 47), the Contractor shall take all responsibility for the work. He shall bear all losses resulting to him or to the District on account of the amount or character of the work or because the nature of the ground in or on which the work is done is different from what is assumed or expected or on account of weather, flood, unforeseen difficulties, accidents, or any other causes. He shall assume the defense of and indemnify and hold harmless the District and its officers, agents, and employees, from all claims of any kind arising from the performance of the contract, including claims for personal injury or death, claims for damage to property and claims for loss of business, and including all such claims as may be presented or asserted by officers, agents or employees of the Contractor, officers, agents, or employees of the District, and officers, agents or employees of subcontractors or third parties.

The District will call to the Contractor's attention all job site conditions or activities known to the District which are likely to create a risk of physical harm to workers or the public. The District will also note any failure to comply with safety rules and regulations when observed or made known to the District, and direct the Contractor to take immediate remedial action to correct such conditions or activities.

In the event that immediate action is not taken by the Contractor to comply with applicable safety rules and regulations and to correct such dangerous conditions or activities, the District reserves the right to stop work under the contract until corrective action is taken by the Contractor. All delays caused by such stoppage of work for failure of the Contractor to take remedial action will be chargeable to the Contractor, and will not be considered as unavoidable delay, as defined in these specifications.

Regardless of any suggestion, direction or other activity by the District, the Contractor and its Surety will continue to indemnify and hold the District harmless under the foregoing provisions of this article. Likewise, any failure of the District to detect or to call attention to any such condition or lack of compliance with safety rules shall in no way relieve the Contractor of his obligations under the contract.

32. CONTRACTOR TO SUPPLY SUFFICIENT LABOR, EQUIPMENT AND MATERIAL

The Contractor shall at all times keep upon the premises a sufficient amount of material, shall have proper equipment available at the job site, and shall employ a sufficient number of workers to prosecute the work according to the contract documents.

Should the Contractor, at any time during the progress of the work, refuse, neglect, or otherwise fail to supply sufficient material, labor, tools and equipment to prosecute the work at such necessary rate, the District may notify the Contractor in writing to furnish whatever the Engineer determines necessary to do so. If the Contractor does not comply with such notice from the District within 3 working days of the date of notice, the District shall have the right to provide the materials and workers to finish the work, and to deduct incurred expenses from any monies due or which may thereafter become due, under the contract.

If the Contractor fails to perform daily tasks (e.g. cutback installation, clean-up), the District shall have the right to complete such tasks and deduct the incurred cost from payments due to the Contractor.

The amount of any such payment shall be deducted from the fund or appropriation set aside for the purposes of the contract and charged to the Contractor as if paid to him.

The District shall have the option to terminate the contract should the Contractor at any time during the progress of the work neglect, refuse or be unable, in the judgment of the District, to supply sufficient material or workers to prosecute the work at the rate necessary to complete it within the time specified in the contract.

33. CONSTRUCTION PLANT, EQUIPMENT AND METHODS

The Contractor's plant and equipment and his methods and organization for handling the work, shall be such as will secure a satisfactory quality of work, and a rate of progress

which, in the judgment of the Engineer, will insure the completion of the work as specified in the contract documents.

The Contractor shall give the Engineer complete, advance written information regarding his plans for prosecuting all parts of the work. If at any time in the judgment of the Engineer, the Contractor's plant or equipment or any of his methods of executing the work are unsafe, or inadequate to insure the required quality or rate of progress of the work, the Contractor may be ordered to increase or improve his facilities or methods accordingly. The Contractor shall promptly comply with such orders; but neither compliance with such orders nor failure of the Engineer to issue such orders shall relieve the Contractor from his obligation to secure the degree of safety, the quality of work and the rate of progress required by the contract. The Contractor alone shall be responsible for the safety, adequacy and efficiency of his plant, equipment and methods.

34. COOPERATION

The Contractor shall cooperate with all other contractors and workers who may be employed by the District on any work in the vicinity of the work to be done under the contract. The Contractor shall conduct the work to avoid interference with the work of such contractors or workers. He shall also assume all liability for any damage to the work of other contractors or injury to employees of the District resulting from his work.

Any difference or conflict which may arise between the Contractor and other contractors or between the Contractor and District employees in regard to their work shall be resolved by the Engineer. The District shall have full authority to coordinate the timing and integration of associated projects or contracts and the Contractor agrees to follow and be bound by the decisions of the Engineer. The Contractor shall suspend or continue any part of the work in a manner prescribed by the Engineer, when such suspension or prosecution is necessary to facilitate the work of other contractors or workers. An extension of time for the completion of the work will be made for such period of time as the Engineer considers the Contractor to have been delayed in the final completion of the work by reason of the Engineer's direction. However, no damages or claims by the Contractor will be allowed for such delays.

The Contractor shall be liable for any damage or delay to the work of the other contractors or workers which may be caused by unnecessary delay or carelessness on his part.

35. INSPECTION

All work and material (including the manufacture and preparation of such material) from the beginning of the construction until final completion and acceptance of the proposed work, shall be subject to the inspection and approval of the Engineer.

Unless otherwise authorized, work shall be done only in the presence of the Engineer. Any work done without proper inspection will be subject to rejection. The Engineer shall at all times have access to the work during its construction or fabrication at shops and yards as well as the project site. The Contractor shall provide every reasonable facility for ascertaining that all material and workmanship conform to the contract documents.

Any work or material found to be in any way unsatisfactory or defective before the acceptance of the proposed work, shall be corrected or replaced immediately by the Contractor at his own expense, regardless of the fact that it may have been previously overlooked or passed by the Engineer. Inspection of the work shall not relieve the Contractor of the obligation to fulfill all conditions of the contract.

Whenever required by the Engineer, the Contractor shall furnish all labor, material, tools and equipment necessary to make an examination of any work under the contract that may be completed or in progress, even to the extent of uncovering or taking down portions of the previously inspected, finished work. Where such uncovering or taking down is necessitated by the Contractor's violation of law or breach of contract, or where such work is found unsatisfactory, the cost of making such examination and of reconstruction shall be borne by the Contractor. If work is found to be satisfactory, the examination and reconstruction costs will be borne by the District in the manner prescribed for payment for extra work.

36. LINES, GRADES, MEASUREMENTS AND SURVEYS

All work under the contract shall be done to the lines and grades indicated in the contract documents or prescribed by the Engineer. The Contractor shall lay out all work, including structures and pipelines, and shall be responsible for any errors resulting. He shall provide all necessary surveys, field staking, and positioning for the construction of all components at the proper alignment, elevations, grades, and positions, as indicated on the Drawings and as required for the proper operation and function. The Contractor shall stake his own work area limits as shown on the drawings.

It may be necessary at times that portions of the Contractor's work be discontinued for brief periods, in order that the Engineer may make measurements or surveys without interruptions or other interference that might impair the accuracy of the results. At any time, on request of the Engineer, the Contractor shall discontinue his work to such extent as may be necessary for such purposes of the Engineer.

No direct payment will be made to the Contractor for work or delays associated with the establishment or checks of lines, grades or measurements. No extension of time will be allowed for such delays.

37. LINE AND GRADE CHANGES

The Engineer may change the alignment, grade or dimensions of any portion of the work from those indicated in the contract documents at any time prior to startup or during work under the contract.

Where such changes are minor in nature, the Contractor shall make no claim for any extra payment due to variations in natural conditions, amounts or construction expenses resulting from changes in lines, grades or dimensions. However, if the change is substantial, and the Contractor can adequately demonstrate from his records the extra cost to him resulting from the change, payment for extra work will be allowed.

If such a change involves abandonment of current contract work which was complete prior to the change by the Engineer, the Contractor will be paid for the abandoned work approved by the Engineer at the prices named in the contract. No allowance or payment will be made for segments of the abandoned work performed subsequent to the notice of abandonment.

38. COMMENCEMENT OF WORK

The Contractor shall be ready to commence the contemplated work within the time limit stated in the agreement and to prosecute it diligently at such rate as will enable him to construct and finish the entire work within the time specified.

In the event that conditions at the work site (due to the work of other contractors or for other reasons) prevent the Contractor from commencing and reasonably prosecuting the work on some substantial portion of the contract he shall notify the Engineer. The Engineer will examine the conditions and notify the Contractor when work shall commence. The District will grant an extension of time equal to the time between the official date for commencement as above determined and the revised date for commencement designated in the notice from the Engineer.

Whenever the contract work is divided into two or more sections at separate locations, or is of such extent that any considerable portion of the work in a single location may be advantageously prosecuted, the Contractor may be required to proceed with work on such section or portion of the Contract.

39. NOTICE OF COMMENCEMENT / CESSATION OF WORK

Before any work under the contract is started, the Contractor shall inform the Engineer of the time and place of work commencement, and the nature of the work to be done, in order that the Engineer may make proper provision for inspection of the work, for furnishing of lines and grades and for making measurements for records and payment. Such information shall be given to the Engineer at least 4 working days in advance of the time at which the Contractor proposes to begin the work.

The Contractor shall inform the Engineer of any work cessation at the site. Such notice shall include an estimate of the time which the Contractor expects to be off the job site. The Contractor shall notify the Engineer of his commencement of further work on the site at least one day prior to resumption of work.

40. CHANGES AND EXTRA WORK

The District may, upon written notice, order alterations in the amount or dimensions of all or any part of the work contemplated, and may order the Contractor to furnish any extra material and perform any extra work that the District may consider necessary or desirable for the proper construction and completion of the work.

41. EXTRA WORK

Any work which, in the judgment of the Engineer, is not covered by the contract documents is extra work. The Contractor shall perform all such extra work when ordered in writing by the Engineer. In the absence of a written order by the Engineer, the Contractor shall not be entitled to payment for said work, other than at bid prices.

The Contractor shall receive compensation for such extra work at the prices contained in the original proposal submitted by him and incorporated in the contract documents, insofar as such prices are applicable. Where existing contract bid items cannot be extended for payment of extra work, a change order will be executed between the District and Contractor. The change order will be on the District's Change Order Form an example of which is included as Exhibit A in Appendix C of these specifications. The remaining prices, either unit or lump sum, shall be agreed upon in writing by the Contractor and the Engineer. If the Contractor and the Engineer fail to agree upon prices, the Contractor shall be paid on a force account basis pursuant to Article 42. Payment for extra work will be included in progress estimates after execution of an approved contract change order.

All bills or claims for extra work shall be filed in writing with the Engineer within 30 days after performance of such extra work. No bill or claim shall be valid unless claimed in writing within that time. In the event a dispute arises between the District and the Contractor as to what work is covered by the contract and what work is extra work, the Contractor shall proceed with the work per the direction of the Engineer as defined under Article 47, "Changed Condition and Hazardous Wastes."

42. FORCE ACCOUNT WORK

When extra work payment is made on a force account basis, the labor, material and equipment used in performance of such work shall be subject to the approval of the Engineer and compensation determined as described in Section 9-1.03 of the CALTRANS Standard Specifications in effect on the contract bid date, except as modified herein:

The Contractor will be paid direct costs for labor and equipment used in performing the work at a minimum rate equal to the Department of Industrial Relations "Prevailing Wage Rate" for labor and at a rate equal to CALTRANS "Equipment Rental Rates" for equipment. Payment for force account work, as described herein, shall constitute full compensation to the Contractor and subcontractors for all direct and indirect costs related in any way to this work and its effect on other work already under the contract. The total payment, as indicated above, shall be deemed to be the actual cost of work and shall constitute full compensation for that work. No additional markup shall be made to reimburse the Contractor for administrative costs associated with work performed by its subcontractors or for bond fees.

On a daily basis, all force account work shall be reported on the District's "Daily Extra Work Report" sheets an example of which is included as Exhibit B in Appendix C of these Specifications. The report sheets shall be considered the Contractor's claim of the force account work done. Receipt or acknowledgment by the District of such report sheet does not constitute acceptability for payment or acceptance of "extra work" status for work. In case of any disagreement as to the amount of any force account work done and its value, the decision of the Engineer shall be final. The Contractor shall also submit photocopies of the applicable Department of Industrial Relations prevailing wage rate and CALTRANS equipment rental rate sheets, with the worker classifications and equipment used on the force account work highlighted, for District reference and attached to the appropriate report.

In addition to the District's report sheets, the Contractor will be required to meet the submittal requirements of Article 24, "Certified Payroll and Cost Data".

43. ACCEPTANCE OF WORK

When the Contractor is satisfied that all work is complete and ready for use, he shall notify the District in writing to that effect. Upon receipt of such notice, the Engineer will make a verification inspection. If the work is found to be satisfactory, the Contractor will be notified in writing and appropriate payment authorized.

44. WORK BEYOND COMPLETION DATE DOES NOT WAIVE DISTRICT'S RIGHTS

In the event that the District allows the Contractor to continue work beyond the original completion date or revised completion date modified by time extension(s), such action shall not constitute a waiver of the District's right to collect liquidated damages as provided or of any other rights of the District under the contract.

45. TERMINATION OF CONTRACT

After giving the Contractor seven (7) days written notice, the District may, without prejudice to any other right or remedy, terminate the contract if:

- a. The Contractor files for protection under the Bankruptcy Act;
- b. a general assignment is made for the benefit of the Contractor's creditors;
- c. a receiver is appointed for the Contractor;
- d. the Contractor persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper material;
- e. the Contractor fails to make prompt payment to subcontractors or for material or labor;
- f. the Contractor persistently disregards laws or regulations or the orders of the District;
- g. the Contractor is otherwise guilty of a material breach of any provision of the contract.

Upon contract termination, the District will take possession of the premises, all material, tools, and appliances and finish the work by whatever method it may deem expedient. The Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the District. All expenses incurred by the District and the damage incurred through the Contractor's default, shall be certified by the Engineer.

46. CANCELLATION OF CONTRACT

District may, at any time, cancel this Contract and the Work hereunder, in whole or part, for District's convenience and without cause, upon written notice. Such written notice shall state the extent and effective date of such Cancellation, and on such effective date Contractor shall (1) to the extent directed, stop Work under this Contract, place no further orders and enter into no further subcontracts for materials, labor, services or facilities; (2) unless otherwise directed, cancel all subcontracts and orders; and (3) take such other actions as may be necessary or directed by the Engineer to protect and preserve the Work and any other property in Contractor's possession in which District has or may acquire an interest.

In the event of Cancellation of the Contract pursuant to this Article 46, District shall pay to Contractor, as Contractor's sole and exclusive remedy, (1) the actual cost of the Work performed by Contractor prior to the effective date of Cancellation, including a reasonable markup on Contractor's actual cost for overhead and a reasonable cost for profit on the actual costs; and (2) such other direct costs pertaining to the Work which Contractor may incur as a result of such Cancellation as approved by District, less (3) payments made prior to the notice of Cancellation; provided, however, that in no event shall the total amount paid to Contractor pursuant to clause (1) exceed the lesser of (a) the Contract Price or (b) that portion of the Contract Price that the Work actually performed prior to the date of Cancellation bears to the entire Work. Any payment under this Article 46 shall be made only upon the expiration of the period within which stop

notices may be filed under the laws of the State of California, or District's receipt of all requested statutory lien waiver and release forms, subject in either case, however, to withholding by District for reasons and in the manner provided in the Contract Documents pertaining to withholding of payments. Any dispute over the amount to be paid upon Cancellation shall be resolved in accordance with the dispute resolution provision of the Contract Documents.

In the event of Cancellation of the Contract pursuant to this Article 46, Contractor shall, at District's request, assign to District all of its right, title and interest in and to all or some of the subcontracts of Contractor under this Contract.

Acceptance by Contractor of the payments referred to in this Article 46 shall operate as a complete release of all claims against District under the Contract Documents or otherwise for payment for construction of the Work. This release shall not apply to the contractor's claims for personal injury or property damage occurring prior to the Cancellation of the Contract. Contractor shall, as a condition of receiving the payments referred to herein, execute and deliver all papers and take all steps, including the legal assignment of its contractual rights as District may require for the purpose of fully vesting in District all rights and benefits of Contractor under such contracts.

47. CHANGED CONDITIONS AND HAZARDOUS WASTES

The Contractor shall notify the Engineer in writing of the work site conditions listed below (called changed conditions), promptly upon their discovery and before they are disturbed, and immediately cease work in the affected area.

- a. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- b. Subsurface or latent physical conditions differing materially from those represented in the Contract; and
- c. Unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character being performed.

The Engineer will promptly investigate reported or discovered conditions which appear to be changed conditions. If the Engineer determines that the conditions are changed conditions or involve hazardous waste or that they will materially increase or decrease the costs of any portion of the work, a change order may be issued adjusting the compensation for such portion of the work in accordance with the article called Extra Work (41). If the Engineer determines that conditions of which it has been notified by the Contractor do not justify an adjustment in compensation, the Contractor will be so

advised in writing. Should the Contractor disagree with such determination, he may submit a protest to the Engineer (see Article 48).

If the Engineer determines that the conditions are changed conditions and that they will materially affect the performance time, the Contractor, upon submitting a written request, may be granted an extension of time.

In the event that a dispute arises between the District and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

The Contractor's failure to give notice of changed conditions promptly upon their discovery and before they are disturbed shall constitute a waiver of all claims in that regard.

48. PROTESTS

If the Contractor considers any work demand to be beyond the requirements of the contract, or if he considers any instruction, order, notice, ruling, omission or decision of the Engineer to be unfair, he shall file a written protest with the Engineer within 15 days after knowledge of the same. The protest shall clearly state the Contractor's objections, reasoning, and the nature and amount of any additional compensation or time extension to which the Contractor believes he is entitled. Unless such protests and objections are made of record in the manner and within the time stated above, the Contractor shall be deemed to have waived and does hereby waive all claims for extra work, damages, and extensions of time on account of demands, instructions, orders, rulings, omission and decisions of the Engineer. The only exception shall be for claims of extra work ordered in writing by the Engineer as provided in Article 41.

Upon receipt of any such protest from the Contractor, the Engineer shall promptly review it and advise the Contractor in writing of his decision. This decision shall be final and binding on all parties, unless the Contractor files a formal claim with the District.

49. CLAIMS

If the Contractor does not agree with the Engineer's decision regarding a protest, he may file a formal written claim within 15 days of the Engineer's written decision. Failure to submit and document a claim in the manner and within the time stipulated in this article shall constitute a waiver of all claims in connection with the underlying protest. No claims will be accepted after acceptance of final payment. In addition to information provided in the protest, the claim shall include references to applicable provisions of the

specifications, computations used in determining claimed compensation, and other pertinent factual data. The Contractor shall maintain complete and accurate records of his activity and costs for which compensation is claimed. He shall also provide certified copies of his records to the Engineer upon request. The Contractor shall have no claim for loss of anticipated profit on portions of the work not performed or for interest on any payment which is the subject of the claim. For claims exceeding \$375,000, the District's General Manager shall consider the claim and render a final decision on any such claim within 30 days of receipt.

All claims of \$375,000 or less shall be submitted pursuant to the above procedure with exceptions noted below. Claims shall be in writing and shall include the documents necessary to substantiate them. The Contractor shall comply with all notice requirements otherwise provided in this contract for the filing of claims.

a. Claims under \$50,000.

- (1) District will respond in writing to any written claim within forty-five (45) days of receipt, or may request in writing, within thirty (30) days of receipt of the claim any additional documentation supporting the claim or relating to defenses to the claims the District may have against the claimant.
- (2) If additional information thereafter is required, it shall be requested and provided through the mutual agreement of the District and the claimant.
- (3) The District's written response to the claim will be submitted to the claimant within fifteen (15) days after the receipt of the further documentation or within a period of time no greater than that taken by the claimant to produce the additional information or requested documentation, whichever is greater.

b. Claims over \$50,000, but under \$375,000.

- (1) The District will respond in writing to any written claim within sixty (60) days of receipt, or may request, in writing within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the District may have against the claimant.
- (2) If additional information is thereafter required, it shall be requested and provided through mutual agreement of the District and the claimant.
- (3) The District's written response to the claim will be submitted to the claimant within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant to produce the additional information on requested documentation, whichever is greater.

- c. District post-response procedure.
 - (1) If the claimant disputes the District's written response, or the District fails to respond within the time proscribed, the claimant may notify the District in writing either within fifteen (15) days of receipt of the District's response or within fifteen (15) days of the District's failure to respond within the time prescribed and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the District shall schedule a meet-and-confer conference within thirty (30) days for settlement of the dispute.
 - (2) If following the conference, the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapters 1 and 2 of Part 3 of Division 3.6 of Title 1 of the Government Code.

50. USE OF IMPROVEMENT DURING CONSTRUCTION

The District reserves the right to take over and utilize all or part of any completed facility or appurtenance. When possible, the Contractor will be notified in advance of such action. Such action by the District will relieve the Contractor of responsibility for injury or damage to said completed portions of the improvement resulting from use or from the action of the elements or from any other cause, except injury or damage resulting from the Contractor's operations or negligence. The use by the District of the work or part thereof as contemplated in this section shall in no case be construed as constituting acceptance of the work or any part thereof. Nothing in this section shall be construed as relieving the Contractor from full responsibility for correcting defective work or materials.

51. SAFETY

- a. General Requirements – The Contractor shall be solely and completely responsible for conditions on the job site, including safety of all persons and property during the performance of the work. This requirement shall apply continuously and not be limited to normal working hours. The Contractor's safety provisions shall conform to all applicable Federal, State, County and local laws, ordinances and codes and to the rules and regulations established by the California Division of Industrial Safety and to other rules of law applicable to the work. In particular, the project is subject to all of the Safety and Health Regulations (CFR 29, Part 1926 and all subsequent amendments) as promulgated by the U.S. Department of Labor and CFR 29, Part 1910 and all subsequent amendments, to include 29 CFR 1926 Subpart M (Amended) and Subpart P (Amended) October 31, 1989, General Industry Safety and Health Regulations Identified As Applicable to Construction, and all Cal OSHA regulations under Title 8 applicable to construction safety. The Contractor shall become familiar with the requirements of these regulations, paying special attention to the items listed below.

- b. Injury – Illness Prevention Program (IIPP) – In accordance with OSHA regulations, the Contractor shall have an IIPP in effect during construction. A copy of the IIPP shall be forwarded to the District prior to construction startup and a copy shall be present on the construction site(s) at all times during work under this contract. The District will have no responsibility to review the IIPP or to determine its adequacy. This is the Contractor’s responsibility.
- c. Competent Person – The Contractor shall have a competent person or persons, as required under the Occupational Safety and Health Act, on each work site to inspect the work and to supervise the conformance of the Contractor’s operations with the regulations of the Act. Prior to work start up, the Contractor shall supply the District with a list of all the competent persons (see definition) in his employment.
- d. Safety Equipment – The Contractor and each of his employees shall use hard hats, orange safety vests and other required safety equipment while on the project site(s) or as directed by the Engineer. No person shall be allowed in the construction zone without proper safety equipment.
- e. General Procedure – The following procedure will be used in regard to field decisions and requirements of the Contractor and the District:
- (1) The Contractor shall have a certified competent person on the job site and available to render safety decisions and take immediate action to correct any potential safety problems as they arise. If the District inspector observes potential safety problems, the Contractor’s representative will be notified.
 - (2) If an imminent hazard (defined as a condition that will most likely result in an accident causing severe or permanently disabling injury or death) is detected by either the Contractor or the inspector, the Contractor shall cease work in the affected area and proceed on other work until the safety problem is corrected. In the case of the inspector suspending work, the Contractor will be issued an order to suspend work in the affected area until the conditions are such that the safe continuance of work is possible. The Contractor shall not receive payment or have a basis for a claim for moving his resources to another part of the work or for correction of the problem. The inspector will document the incident in his daily report and take photographs of the condition and the site. District management will be notified of the condition and the action taken.
 - (3) If a condition exists that is currently not an immediate danger to persons in the construction zone, but has the potential, if not corrected, to become an imminent hazard, the inspector will notify the Contractor in writing of the condition. The letter should also state a reasonable time for correction by the Contractor, after which the condition will be considered an imminent hazard. If the Contractor does not correct the dangerous condition or it is developing into

an imminent hazard, the District will consider suspension of the affected portion of the work until the condition is corrected. The District will notify the Contractor, in writing, of such a suspension, and the Contractor shall not be entitled to additional payment for correction of the condition or for moving on to other work.

- (4) If a condition arises that could cause minor injuries or is small in nature, but is still a threat to health, the inspector will advise the Contractor of the condition and of the necessity to eliminate it. If the Contractor continues to allow the condition to persist, the District may notify the Contractor in writing and the Contractor may be considered non-responsive on future bid proposals. The Contractor shall not be entitled to additional payment for remedying these conditions.

52. CONTRACTOR'S OFFICE AT THE WORK SITE

Throughout the performance of the contract, the District may require that the Contractor maintain a work site office where the Contractor's representative who is authorized to receive instructions, drawings, or other communications from the Engineer will be located. In the representative's absence, delivery to such office shall be deemed to have been given to the Contractor.

53. CONTRACTOR'S SUPERINTENDENTS OR FOREMEN

The Contractor shall at all times during his absence be represented on the work by one or more superintendents, foremen or other representatives authorized and competent to receive and carry out any instructions that may be given to him (them) by the Engineer. The Contractor shall be liable for the faithful observance of any instructions delivered to him or to such representative(s) on the work.

54. CONTRACTOR'S EMPLOYEES

The Contractor shall employ only competent and skillful workers on the work. Upon notice, the Contractor shall immediately discharge any worker that in the judgment of the Engineer is incompetent, unfaithful, disorderly, or refuses to carry out the provisions of the contract, uses threatening or abusive language to any person on the work representing the District or is otherwise unsatisfactory. That worker shall not be re-employed on the work without the consent of the Engineer.

55. USE OF DRUGS

The Contractor shall not permit alcoholic beverages, narcotics, hallucinogenic or other dangerous drugs nor the presence of employees or subcontractors' employees under the influence of such drugs about the work, or upon any area occupied by him in the

prosecution of the work. Drugs for medicinal purposes will be allowed if they do not impair work performance or job safety.

56. NIGHT AND WEEKEND WORK

If at any time the Engineer deems it necessary for proper progress of the work, the Contractor may be required to prosecute the work at night or on weekends. In addition, if the Contractor requests to do work at night or on weekends, he may be allowed to do so if approved by the Engineer. The Contractor shall bear all costs for inspection of night and weekend work unless otherwise indicated in writing by the Engineer. The Contractor shall receive no extra payment on account of doing work at night or on weekends. No such work shall be done unless previously approved in writing by the Engineer.

57. WORKING HOURS AND OVERTIME WORK

Unless otherwise required by the Specifications, all work shall be accomplished during normal District working hours are 7:00 AM to 4:30 PM, Monday through Friday, excluding holidays observed by the District (See Appendix A). The Contractor shall keep the Engineer fully informed of all work outside these working hours in order to assure proper scheduling of required inspection and materials testing personnel. The Contractor shall make written request for inspection on District observed holidays and shall only work if an inspector can be provided. The costs of inspection of such work will be charged to the Contractor and will be deducted from any payment due him. All inspection work and vehicle usage outside the regular working hours as described above or beyond eight hours per day on any particular job, will be charged at each inspector's current overtime rate with applicable overhead and vehicle rates, respectively.

58. PROTECTION OF WORK, PERSONS AND PROPERTY AGAINST DAMAGE

The Contractor shall protect his work and material from damage due to the nature of the work, the action of the elements, the carelessness of other contractors, or any other cause, until the completion and acceptance of the work. Should any damage occur, he shall repair it at his own expense to the satisfaction of the District. Neither the District nor any of its agents assumes any responsibility for collecting indemnity from any person, or persons, causing damage to the work of the Contractor.

The Contractor shall bear all responsibility for personal injuries, death or property damage caused by or arising from his performance under the contract. Whenever reasonably necessary to prevent the same, the Contractor shall furnish guards, fences, warning signs, walkways, lights, barricades, and any other necessary precautions. All efforts shall be made by the Contractor to avoid damage to trees and other plants. All landscaping, including but not limited to lawns, trees, shrubs, fences, driveways, walkways and paths shall be restored as nearly as practicable to their original state. All safety orders, rules and recommendations of the District, the City, or County in which the work is to be done, and the State of California Division of Industrial Safety and the Occupational Safety and

Health Administration (OSHA) applicable to the work to be done under this contract, shall be obeyed and enforced by the Contractor. No order or direction of the Engineer or any other representative of the District shall relieve the Contractor of any such responsibility. The Contractor shall bear all responsibility for determining any possible fire hazard in the area in which work is to be performed and shall observe all rules and regulations of the responsible fire department or jurisdiction. In the event a fire is started by the Contractor, the work force on the site shall be at the disposal of the fire fighting agencies for purposes of checking and extinguishing the fire. In such an event, there shall be no claims against the District, the City, the County or the State and all claims for damage shall be the responsibility of the Contractor.

As a result of required study and investigation (Article 1 of Information and Instructions), the Contractor acknowledges that he has fully considered all risks, hazards and safety measures particular to this contract. If at any time it appears that the proposed work or installations will create or cause any risk to persons or property, the Contractor shall assume all responsibility to avoid and eliminate such hazard or risk and shall take such additional steps and provide such additional safety measures as are reasonably required to eliminate them.

The District may, at its option, retain monies due under the contract until all suits or claims for damages have been finally resolved by satisfaction of judgement or settlement and satisfactory evidence to that effect is furnished to the District.

59. PROTECTION OF EXISTING FACILITIES, UTILITY RELOCATION, EQUIPMENT SIZING AND FLUID LEAKAGE

The Contractor shall protect all District pipes, facilities and roads near the work. Any damage to District facilities by the Contractor shall be repaired to an equal or better condition than what exists at the time of damage.

The District will only assume the financial responsibility for timely removal, relocation, or protection of existing main or trunkline utility facilities located on the construction site which are not identified with reasonable accuracy in the contract documents. This does not include non-pressurized sewer, storm drain and drainage lines. The Contractor shall be compensated in accordance with Article 41 for the costs of locating, repairing damage not due to the Contractor's negligence and removing or relocating such facilities.

Upon learning of the existence and location of any utility omitted from or shown incorrectly on the plans, or not properly field marked, the Contractor shall immediately notify the Engineer in writing.

The Contractor shall bear all responsibility for removal, relocation, or protection of all other existing facilities, utilities, underground structures and private property in the work area. He shall at all times prosecute his work so as not to damage said facilities, utilities, structures or property nor interfere with their safe operation and use.

The Contractor shall hire a traffic signal location company to locate and mark all wires for electrical traffic signals prior to trenching. Costs for this labor shall be included in appropriate bid items under this contract.

Whenever existing utility mains, laterals, conduits, ducts, pipes, or structures are in conflict with the grade and alignment of the work, they shall be permanently supported, removed, relocated or reconstructed by the Contractor through cooperation with the owner of the obstructing facility.

When working close to existing underground facilities the Contractor shall protect the facilities encountered. Except as specified above, the cost of repairing, replacing or protecting these facilities shall be borne by the Contractor. If in the judgment of the Engineer the Contractor is not taking proper precautions, the District shall proceed to have the facilities properly protected and, except as specified above, the cost of protection will be deducted from the total amount due the Contractor.

Should any such facilities, utilities, structures or property be damaged during the Contractor's operations, he shall immediately notify the property owners or proper authorities and arrange for immediate repair at his expense.

In accordance with the provisions of the Section 4215 of the California Government Code, the Contractor shall not be assessed liquidated damages for delaying completion of the project, when such delay was caused by the failure of the public agency or owner of the utility to provide for the removal or relocation of such utility facilities.

It shall be incumbent on the Contractor to make a thorough investigation of the job site and to size the equipment accordingly. The Contractor shall select equipment to avoid damaging existing facilities, which include, but are not limited to: street paving, pipes, traffic controls, sidewalks, plant material, landscaping, curbs and gutters, retaining walls, etc. Any damage shall be restored by the Contractor at no cost to the District.

If equipment fluid leakage (e.g. hydraulic fluid, oil) stains any street in excess of five occurrences with a total area of more than 20 square feet, then the Contractor shall, at his cost, be required to slurry seal (CALTRANS-Section 37.2) that street within limits specified by the local jurisdiction or the Engineer. Sidewalks and driveways shall be repaired as specified by the local jurisdiction or the Engineer.

60. ILLUMINATION OF WORK

When any work is performed at night, in a tunnel or in a place where there is little or no daylight, the Contractor shall provide artificial light sufficient to prosecute the work properly and safely and to permit thorough inspection.

61. TRAFFIC CONTROL

During working hours, two-way traffic shall be maintained on all traveled roadways in the construction zone. Whenever the traveled way is reduced to one lane, the following conditions shall be met:

- a. Proper traffic control shall be in effect at all times as described in the current "California Manual on Uniform Traffic Control Devices"(CA MUTCD) and the "CA MUTCD Uniform Sign Chart," issued by the California Department of Transportation.
- b. There shall be two full-time flagpersons, one at each end of the work area. Each flagperson shall be equipped with an orange vest, 'STOP/SLOW" paddle and an orange flag. In addition, portable radio communication shall be used as directed by the Engineer.
- c. ** Signs warning motorists of the upcoming obstructions shall be placed an adequate distance ahead of the work area. Proper coning, as determined by the Engineer, shall be maintained to direct traffic safely.
- d. ** Failure to comply with the above rules or to maintain traffic control in a safe manner shall be cause for the immediate shutdown of the work.

** To be in effect at all times.

The Contractor shall furnish all necessary flagpersons and traffic control equipment in the areas where work is being performed and routing and directing of traffic is required. The areas in which flagpersons are required, the number of flagpersons, and the amount of traffic control equipment, shall be determined by the Engineer.

All temporary surfacing shall conform to existing pavement elevation as precisely as practicable. Prior to final paving, the Contractor shall maintain temporary paving surfaces to insure safe, convenient travel by users of the roadway. Temporary paving shall be patched on a daily basis as directed by the Engineer. Cutback shall not be used except when pre-approved by the Engineer or when trimming trench plates.

62. ROAD ACCESSIBILITY

No roads shall be blocked or made inaccessible, due to the Contractor's work, without prior written approval of the Engineer and the affected agencies. The length of trench excavation in advance of the pipe laying operation and amount of ditch remaining open without backfill will be regulated by the Engineer in accordance with field conditions. Any such requirement placed on the Contractor shall not be considered as a claim for delay of work.

63. PUBLIC INCONVENIENCE

The Contractor shall take all necessary steps to minimize inconvenience to the general public throughout all work under this contract. No driveways or private roads shall be blocked without notifying the property owner and access must be restored during all non-working hours. Safe access must be maintained for pedestrian traffic throughout the work at all times. At least one lane of the street must be kept open at all times unless prior arrangements have been made with all involved parties.

All stockpiled material and parked equipment at the job site shall be located to avoid interference with private property and to prevent hazards to the public. Locations of stockpiles and parking areas must be approved by the Engineer.

64. DRAINAGE PROTECTION

If the proposed work may be performed during the rainy season, the Contractor shall act to maintain existing drainage facilities by working carefully around them. He shall not divert water on private land nor permit water to pond. He shall not inconvenience the public or jeopardize its safety.

65. DUST ABATEMENT

At all times during work performance, the Contractor shall exercise proper and efficient measures to prevent his operations from producing dust in amounts which may cause damage to property or a nuisance to persons in the general vicinity of the work. Water to settle the dust may be available from the District's facilities. If District water is not available, the Contractor, at his expense, shall arrange for alternate water sources.

66. HAULING OVER CITY STREETS, COUNTY ROADS, AND ALL HIGHWAYS

The Contractor shall obtain all required permits for hauling over City streets, County roads and State or interstate highways. He shall strictly follow permit requirements, particularly load limitations. Full responsibility for hauling shall be borne by the Contractor.

67. CLEAN UP

During the progress of the work, the Contractor, on a daily basis, shall keep all his work areas in a neat and clean condition. As directed by the Engineer, refuse, excess backfill materials and other undesirable material shall be removed in a satisfactory manner as often as may be necessary to prevent any accumulation of such materials.

The discharge of solid or liquid waste materials into stream channels from the construction area will not be permitted at any time. Any substances which are individually, cumulatively or collectively considered toxic or harmful to humans, wildlife,

vegetation or aquatic biota, shall be kept under control at all times and must not be allowed to escape the construction area. All such substances shall be completely contained during transportation and storage, and used safely without spillage.

Following the completion of any portion of the work, the Contractor shall promptly remove all of his equipment, temporary structures and surplus material, except as otherwise provided, and shall satisfactorily dispose of all refuse resulting from the work, leaving the premises in a neat and clean condition.

Each job site shall be clean at the end of each working day. The Contractor shall remove all dirt, debris, material, etc., which might be an inconvenience or hazard to vehicular or pedestrian traffic. All clean-up operations shall be done to the satisfaction of the Engineer, and final clean-up shall not lag behind the completion of the construction operation by more than three working days.

The District reserves the right to authorize, without notice to the Contractor, clean-up of a site if necessary. Costs for such action shall be borne by the Contractor.

68. CONSTRUCTION ACCESS

Construction access will be via city streets, country roads and District roads as shown on the Contract Drawings. Keys to gates necessary for access within the District watershed lands will be furnished to the Contractor by the District. Keys shall not be duplicated. All keys issued to the Contractor shall be returned to the Engineer as a condition for processing final payment. In the event keys are lost, the sum of \$100.00 will be deducted from the final payment for each and every key not returned. Gates shall be kept locked when not in use by the Contractor unless they are opened for District operations.

69. MATERIAL TO BE OBTAINED FROM THE DISTRICT

When indicated in the Contract Documents, certain material will be provided by the District to the Contractor. This material shall be obtained by the Contractor at the District's yards in Corte Madera or San Rafael, California, or other designated sites.

The Contractor shall provide all labor, tools, material (i.e. dunnage, tie downs, etc.) and equipment necessary for loading, hauling and unloading material from the storage points to the job sites. By signing the requisition paperwork, the Contractor verifies that the material received from the District is of satisfactory quality for installation. The Contractor shall be responsible for proper and careful handling of all material from the time it is obtained until it is properly and completely installed and accepted by the District. Any damage to material during this time shall be the Contractor's responsibility and he will bear all costs of repairing or replacing such material.

Prior to commencement of work under the contract, material to be furnished by the District will be issued only upon written request by the Contractor if submitted to and

countersigned by the Engineer at least 4 working days prior to furnishing of such material. No material will be issued until the Notice to Proceed is issued by the District. After work has commenced the Contractor shall give the District at least a 24-hour notice prior to drawing of material. Receipts for material which are signed by the bearer of the request shall be conclusive evidence of the delivery of the specified material to the Contractor. It is the Contractor's responsibility to verify that the material obtained from the District is of proper quantity to complete the intended portion of work prior to starting that portion of work. All excess material shall be returned undamaged to the point from which they were obtained within 5 working days after written request by the Engineer. All damaged material will be charged to the Contractor.

Unless otherwise specified, the District will furnish reasonable quantities of free water as required for approved or specified construction purposes. Water will be provided from District facilities through the inspector's construction meter. Use of fire hydrants is subject to permission from the applicable local fire jurisdiction and operation of hydrant valves will not be permitted. Care shall be exercised in drawing water from District facilities and the Contractor shall comply at all times with instructions from the Engineer in this regard. The Contractor shall be liable for any damage or waste resulting from improper drawing of water.

70. RESPONSIBILITY FOR MATERIAL

The Contractor shall be responsible for all material that he furnishes and shall replace at his own expense all such material found to be defective in manufacture, damaged in shipping or damaged in handling after delivery by the manufacturer. This shall include the furnishing of all material and labor required for the replacement of such defective material.

The Contractor's responsibility for material furnished by the District shall begin at the point of delivery to the Contractor. Material already on the site shall become the Contractor's responsibility at the time the Notice to Proceed is issued for the contract. The Contractor shall examine all material furnished by the District at the time and place of delivery to him and shall reject all defective material. Any material furnished by the District and installed by the Contractor without discovery of such defects will, if found defective prior to final acceptance, be replaced with sound material by the District. However, the Contractor, at his own expense, shall furnish all labor and equipment necessary to remove said defective material and install the sound material in a manner satisfactory to the Engineer.

71. SALVAGE OF MATERIAL

During the work all salvageable material, equipment or appurtenances which are removed from existing facilities shall remain the property of the District and shall be returned to the District yard. The determination of which material is salvageable shall be made by the Engineer whose decision shall be final. Material which is not designated

salvageable shall become the property of the Contractor and be removed from the site of the work.

72. SAMPLES AND TESTS OF MATERIAL AND WORK

Upon request of the Engineer, the Contractor, at his own expense, shall prepare and furnish samples and test specimens of any material not obtained by the District and identify the source of such material.

All samples shall be submitted with ample lead time to enable the Engineer to make any tests, analyses or examinations the Engineer deems necessary prior to incorporation of such material into the work.

All tests of the completed work required by the specifications shall be made by the Contractor under the direction of the Engineer. In addition to bearing the costs of testing, the Contractor, at his own expense, shall repair all damages to the work resulting from test failure.

In order that the District may determine the Contractor's compliance with contract requirements that are not readily enforceable through inspection or tests of the work and material, the Contractor shall, upon request, submit to the Engineer properly authenticated documents or other satisfactory proofs of compliance with such requirements.

73. DEFECTIVE MATERIAL AND WORKMANSHIP

Material, work or workmanship which, in the judgment of the Engineer, do not conform to the specifications and drawings, are not equal to the samples submitted to and approved by the Engineer, or are in any way unsatisfactory for their intended purpose shall be rejected. The Contractor shall remove all rejected material from the work without delay. If the Contractor fails to do so within 48 hours after having been so directed by the Engineer, the rejected material may be removed by the District and cost of removal charged against the Contractor. No payments shall be made until such material is removed.

Unsatisfactory material and workmanship may be rejected at any time during the progress of the work, regardless of any previous testing, inspection or acceptance of such material or workmanship or inclusion thereof in estimates for payments.

74. PATENTS

All fees or claims for use of any patented invention, article or arrangement that is in any manner connected with the performance of the proposed work shall be included in the price bid for doing the work.

The Contractor and his Sureties shall indemnify, hold harmless, release and defend District, its agents and employees from: (1) all demands made for such fees or claims; and (2) all suits and claims by the holder of any invention or patent or growing out of any alleged infringement of any patent. Before final payment is made, the Contractor shall furnish acceptable proof to the District of a proper release from all such fees or claims.

75. MATERIAL EQUIVALENCE

Whenever any article or class of materials is specified by a trade name, or by the name of a particular patentee, manufacturer, or dealer, the requirements of the specifications will be satisfied by the use of either the specified item or any other item that the Engineer determines is equal in quality, finish, durability, and serviceability for its intended purposes.

Unless otherwise specified, the Contractor shall have 35 days after the award of the contract to supply material submittals or for submission of data substantiating a request for a substitution of an "or equal" item where the District has specified a brand or trade name in these specifications. If, upon District review, the item is determined not to be equal in any way with specified items, the Contractor will be notified in writing and shall have ten days from notification to submit an alternate item. Failure to meet any of these times for submittal will result in the Contractor agreeing to use specified items.

In those instances where the Contractor opts to use a product that has been designated to match others then in use in any particular District improvement either completed or in the course of construction, no submittals shall be required.

76. MATERIAL SAFETY DATA SHEET (MSDS)

Attention is directed to the provisions of General Industry Safety Orders, Section 5194, Title 8, California Administrative Code. The Contractor shall submit to the Engineer a Material Safety Data Sheet for each hazardous substance proposed to be used on the work, ten days prior to the delivery of such material to the job site or use of such material at a manufacturing plant where the engineer is to perform an inspection. For materials which are to be tested in District laboratories, the MSDS shall be submitted with the sample(s). A hazardous substance is defined as any substance included in the Director's List of hazardous substances prepared by the Director, California Department of Industrial Relations, pursuant to Labor Code Section 6382. Failure to submit an MSDS for any hazardous substance may result in actions as provided in Articles 45 and 46 of these Specifications regarding termination and cancellation of contract.

77. PROGRESS PAYMENTS

Monthly progress payments will be made, based on the prorata value of the actual work completed as 30 days after the Notice to Proceed, and every 30 days thereafter. The Engineer shall make an estimate of the total amount of work completed and the value of such completed work at the contract price. Unless otherwise stipulated in the Special

Provisions, no allowance will be made for materials furnished by the District and delivered but not incorporated into the work. Payment will be authorized and forwarded at the earliest practicable date, but no interest or damages shall be paid by the District for delays in payment of any progress payments.

The District shall retain 5% of the estimated value of completed work as security for the fulfillment of the contract by the Contractor. The Contractor shall be paid the balance of the progress payment after deduction of all previous payments and sums to be retained under the provisions of the contract.

In compliance with Public Contracts Code section 22300, the Contractor may substitute securities for monies withheld by the District to ensure performance under this contract. Securities eligible for investment under this article shall include those listed in Government Code section 16430, bank or savings & loan Certificates of Deposits, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreeable to the Contractor and the District. The escrow agreement for security deposits in lieu of retention shall be in a form substantially similar to that specified in Public Contracts Code section 22300. District control of securities or accounts will be released upon satisfactory completion of the contract (see Article 79 - Final Estimate and Payment). Alternately, the Contractor may request that the District make payment of retention directly to an escrow account at the expense of the Contractor.

No progress payment shall be made, if in the judgment of the Engineer, the work is not proceeding according to the provisions of the contract or the total value of the work done since the last estimate amounts to less than \$500.

Progress payments shall not be construed as an acceptance or approval of any part of the work and shall in no manner relieve the Contractor of responsibility for defective workmanship or materials. Progress payments shall not operate to invalidate any of the provisions of the contract or to release the surety.

78. RETENTION OF SUMS, CHARGED AGAINST CONTRACTOR

It is mutually understood and agreed that any charges by the District against the Contractor in accordance with contract provisions shall be deducted and retained by the District from any monies due or that may become due the Contractor.

79. FINAL ESTIMATE AND PAYMENT

When all work is complete and acceptable in accordance with the contract, the Engineer will make final measurements of the amount of work performed, and complete a final payment determination based on the contract prices and the provisions of Article 77 (Progress Payments). The District will pay the Contractor the balance due or will release held securities or accounts 35 calendar days after the Notice of Completion is recorded.

The payment determination of the Engineer shall be final and conclusive evidence of the amount of work performed by the Contractor under the contract and shall be taken as the full measure of compensation to be received by the Contractor. Acceptance and/or payment shall not release or modify the guarantee and maintenance bond.

80. WORK TO BE DONE WITHOUT DIRECT PAYMENT

Wherever it is specified that the Contractor is to do work or furnish material of any class for which no price is fixed in the contract, it shall be understood that such work or material shall be provided without additional charge, allowance or direct payment of any sort. The cost of such items is to be included in bid prices under related items requiring such work or material.

81. PAYMENT FOR INCREASED OR DECREASED QUANTITIES

When alterations in plans or quantities of work are ordered and performed, the Contractor shall accept payments in full at the contract unit prices for the actual quantities of work done and no allowance will be made for anticipated profits.

82. LIQUIDATED DAMAGES FOR CONTRACTOR'S DELAY

If the completion of the work is delayed beyond the completion time set forth in the contract documents, or such extension(s) of time as may be allowed by reason of unavoidable delays, the District shall deduct from the total contract price the sum indicated in the contract documents for each calendar day of delay.

It is further understood and agreed that said sums shall be considered not as penalties, but as liquidated damages. It is agreed that said sums represent a reasonable good faith effort to fix a fair compensation to the District for the estimated actual damages which will be incurred by the District due to any such delay.

Any money which is due or to become due to the Contractor may be retained by the District to cover said liquidated damages, and should such money not be sufficient to cover such damages, the District shall have the right to recover the balance from the Contractor or his sureties with legal interest from the date(s) such delay occurred.

The Contractor acknowledges that he understands, agrees, and has ascertained by his own investigation that (1) the District will suffer actual damages in the event completion of the work is delayed beyond the completion time set forth in the contract documents, (plus any extension(s) of time as may be allowed by reason of unavoidable delays); and (2) the sum for liquidated damages indicated in the contract documents, is a reasonable estimate of fair compensation to the District for its estimated actual damages in case of such delay since it would be impractical or extremely difficult to fix the actual damages in the event of such delay.

83. METHOD OF COMPUTING LIQUIDATED DAMAGES

In determining the number of days for which liquidated damages are applicable, the Engineer will add to the contract completion date the number of days of unavoidable delay, if any, which the District determines to have occurred in the prosecution of the work. This corrected date shall be taken as the date allowed under the contract for the completion of the work. The number of calendar days elapsing between the corrected date for completion and the actual date of completion will be multiplied by the number of dollars per day for liquidated damages (as specified in the contract documents) to determine deductions from the contract price.

84. CONTRACTOR TO SERVE NOTICE OF DELAYS

Whenever the Contractor experiences or foresees any delay in the prosecution of the work, he shall immediately notify the Engineer in writing of the actual occurrence or probability of such delay and its cause and request a time extension. This will allow the District to take immediate steps to prevent, if possible, the occurrence or continuance of the delay. In addition, the District will be able to determine how long it may continue, to what extent the prosecution and completion of the work will be delayed, whether any delay is unavoidable and the appropriate length of time extension to be granted, if any.

After the completion of some or all of the work, the Engineer, in estimating the amount due the Contractor, shall determine that no delays which occurred were unavoidable except for those promptly brought to the Engineer's attention in writing at the time of their occurrence and determined by the Engineer to have been unavoidable. The Contractor agrees that no claim for time extension or unavoidable delay will be made for any delay that was not promptly reported to the Engineer as required in this Article.

85. EXTENSIONS OF TIME

The District may grant the Contractor additional time for completion beyond that specified in the contract if in the District's judgement work completion has been or will be delayed as a result of unavoidable delays (see Article 86). In such cases, the District will grant such additional time for completion as it finds reasonable and commensurate with the unavoidable delay. Evaluation of contract delays will only be considered upon contract completion.

86. UNAVOIDABLE DELAYS

Unavoidable delays in the work prosecution or completion are all delays resulting from causes beyond the Contractor's control which he could not reasonably have anticipated and mitigated or avoided by the exercise of care, prudence, foresight, and diligence and which actually and necessarily cause a delay in the completion of the whole work. Any delay which results from District changes in the amount of work to be done, the quantity of material to be furnished, the manner in which the work is prosecuted or the schedule

of other forces working concurrently for the District, or any delay caused by the District's or another utility owner's failure to provide for removal or relocation of existing main or trunkline utility facilities located on the construction site which are not identified with reasonable accuracy in the contract documents, will be defined as right-of-way delays and will be paid for as outlined below. Right-of-way delays will be considered unavoidable to the extent that they actually and necessarily delay the Contractor's completion of the whole work. Unavoidable delays do not include delays caused directly or indirectly by the default, delay, or other breach of the Contractor. Delays due to adverse weather conditions will be regarded as unavoidable only to the extent that they actually and necessarily cause a delay in completion of the whole work and to the extent that such conditions could not reasonably have been anticipated and mitigated or avoided by the exercise of care, prudence, foresight, and diligence.

Right-of-Way delays will be defined and paid for in accordance with CALTRANS Section 8-1.09 "Right of Way Delays", as modified in Article 42, Force Account Work.

87. CONTRACTOR INVESTIGATIONS

- a. In addition to requirements of applicable Laws and Regulations, including California Government Code Section 4216 as referenced in Article 3.07, Laws and Regulations, and prior to commencement of the work, the Contractor shall make its own investigations, including exploratory excavations, to determine the locations and type of existing underground facilities, service laterals or appurtenances when their presence can be inferred from the presence of other visible facilities, such as buildings, meters, manholes, sewer clean-outs, and junction boxes on or adjacent to the site of the work.
- b. In addition to exposing all mains, trunk lines, electrical lines, and conduits that cross the to-be-installed pipelines, the Contractor shall expose shown or inferred service laterals, appurtenances, and other inferred underground facilities, which might interfere with construction of the work, including connection locations to the existing system.
- c. Where the Contractor discovers underground facilities not identified in the Contract Documents, or in a position different from that indicated on the Contract Documents, the Contractor shall immediately, notify in writing, the Engineer and the owner or operator of the underground facility. The Engineer will determine what changes in grade, if any are required, and the contractor will be entitled to no additional payment other than at bid items prices from the contract.
- d. Prior to installing a service lateral using a punch tool trenchless technique, the Contractor must locate and ascertain the depth of all conflicting utilities. The Contractor shall clearly mark the depth and location of conflicting utilities. For sanitary sewer and storm drain facilities, the Contractor can utilize existing evidence of depth, such as manholes. For all other utilities, the Contractor shall use a pipe

locator with a depth indicator. The Contractor is responsible for installing the service without damaging any other utilities.

- e. Any damage to District facilities by the Contractor shall be repaired to an equal or better condition than what exists at the time of damage.

88. SMOKING

Smoking will not be allowed at any District facilities or on any of the District's Watershed Lands.

89. COMMUNICATION

During the performance of this Contract, the Contractor, or an on-site representative, shall be accessible during normal working hours by telephone, to receive instructions or other communication from the District. The Contractor shall maintain communication with the District through a cellular phone or shall respond to calls sent to a pager/beeper. The Contractor shall provide either a cellular phone or a pager and shall supply the District with the appropriate telephone number for communication.

90. STORAGE OF MATERIALS, EQUIPMENT AND VEHICLES

The Contractor shall take all responsibility for storage of material, equipment and vehicles at the job site. Material and equipment for incorporation in the project shall be protected, handled, and stored as appropriate.

Material, equipment and vehicles shall be stored only in areas and in a manner approved by the District and by the local town, city, or county. The Contractor shall not store material, equipment and vehicles on either public or private lands without expressed written consent from the owner of the lands.

Tools and equipment may be stored within District facilities provided it does not hinder access to, or operation of, equipment that is in service.

91. USA NOTIFICATION AND UTILITY FIELD MEETING

The Contractor shall contact Underground Service Alert (USA) (1-800-642-2444) seven (7) calendar days prior to start of work and shall be responsible for maintaining a valid USA location tag through renewal during the construction. The Contractor shall schedule a utility field meeting prior to any excavation. This shall be so stated in the USA Notification. The Contractor shall be responsible to coordinate the utility field meeting at which time he shall explain the limits and impacts to USA member utilities. In addition, the Contractor shall expose all existing utilities along the work prior to work startup in order to verify the accuracy of utility markings. Any changes resulting from a failure to contact USA shall be the Contractor's responsibility.

92. COMPLIANCE WITH ENVIRONMENTAL LAWS

During construction, the Contractor shall comply with all pertinent requirements of Federal, State, and local environmental laws and regulations, including, but not limited to the Federal Clean Air Act, State and local air pollution, water pollution and noise ordinances, and construction site erosion control regulations.

The Contractor shall submit an erosion control plan to the Engineer prior to construction and must have erosion control in place at least 48 hours prior to construction.

93. TESTS

a. General

Where the Specifications require work to be specially field tested or approved, it shall be tested only in the presence of the Engineer after timely notice of its readiness for inspection and test.

The results of any tests are made for the information of the Engineer. Regardless of any test results, the Contractor is solely responsible for the quality of workmanship and materials and for compliance with requirements to the Drawing and Specifications.

Except as specially required under detail material specifications for shop testing and inspection, all tests of materials furnished by the Contractor where tests will be made by the Engineer will be done according to commonly recognized standards of national organizations. The Contractor shall furnish such samples of all materials as required by the Engineer without charge. NO material shall be used unless it has been favorably reviewed by the Engineer.

Where such inspection and testing are to be conducted by an independent laboratory or agency, the sample or samples of materials to be tested shall be selected by such laboratory or agency, or the Engineer, and not by the Contractor.

b. Costs of Testing

The Contractor shall be responsible for, and shall pay for, all source quality control and all offsite tests of materials required, except those tests specially noted to be performed and paid for by the District. The Engineer shall have the right to witness all offsite tests and the Contractor shall furnish adequate notice of when tests will be made.

When, in the opinion of the Engineer, additional tests or inspections are required because of the manner in which Contractor executes his work, such tests and inspections will be paid for by the District, but will be deducted from the Contract

price. Examples of such additional tests and inspections are: test of materials substituted for previously accepted material, or substituted for specified material, or retests made necessary by failure of material or equipment to comply with the requirements of the Specifications.

All piping shall be hydrostatically tested for tightness, unless otherwise specified.

Where water testing of piping is required, the Contractor shall furnish and dispose of the water required for the testing of piping for tightness.

94. SANITATION

The Contractor shall provide, at his own expense, adequate sanitary/restroom facilities for all persons working on the project at the work site and maintain the same in a clean and sanitary condition.

95. DISTRICT HARASSMENT POLICY

The District is committed to providing a work environment that is free of discrimination and harassment. In keeping with this policy, the District prohibits discrimination or harassment of any kind, including discrimination on the basis of sex, race, color, religion, creed, age, mental or physical disability, medical condition, national origin, ancestry, marital status, veteran status, citizenship status, military service, sexual orientation or any other characteristic protected under federal law, state law or local ordinance. Harassment and/or discrimination of District employees by the Contractor, its employees, agents and/or subcontractors is prohibited.

This Contract specifically incorporates the District's Anti-Harassment and Discrimination Policy. All Contractors, their employees, agents and subcontractors are required to follow the District's Anti-Harassment and Discrimination Policy. Contractors will be provided a copy of the District's policy upon request. Failure to follow the policy shall be cause for termination of the Contract under Article 45 "Termination of Contract" or discharge of a Contractor's employee under Articles 53 "Contractor's Superintendents or Foremen" and 54 "Contractor's Employees" of the Standard Specifications.

96. DISPUTE RESOLUTION

The following provision shall apply to all claims not subject to Public Contracts Code Sections 20104 et seq.:

a. Mediation

Any dispute or claim in law or equity between District and Contractor arising out of this agreement, if not resolved by informal negotiation between the parties, shall be mediated by referring it to the nearest office of Judicial Arbitration and Mediation

Services, Inc. (JAMS) for mediation. Mediation shall consist of an informal, non-binding conference or conferences between the parties and the judge-mediator jointly, then in separate caucuses wherein the judge will seek to guide the parties to a resolution of the case. If the parties cannot agree to a mutually-acceptable member from the JAMS panel of retired judges, a list and resumes of available mediators numbering one more than there are parties will be sent to the parties, each of whom will strike one name leaving the remaining name as the mediator. If more than one name remains, JAMS arbitrations administrator will choose a mediator from the remaining names. The mediation process shall continue until the case is resolved or until such time as the mediator makes a finding that there is no possibility of resolution.

b. Arbitration

At the sole election of the District, any dispute or claim in law or equity between District and Contractor arising out of this agreement which is not settled through mediation shall be decided by neutral binding arbitration and not by court action, except as provided by California law for judicial review of arbitration proceedings. The arbitration shall be conducted in accordance with the rules of Judicial Arbitration Mediation Services, Inc. (JAMS). The parties to an arbitration may agree in writing to use different rules and/or arbitrators.

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